SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 152

THOMAS W. NELSON AND ARTHUR GLOBE, PETITIONERS

vs.

COUNTY OF LOS ANGELES, ET AL.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

INDEX

1 Before the Civil Service Commission of Los Angeles County

IN THE MATTER OF THOMAS W. NELSON

APPEAL FROM DISCHARGE

Reporter's transcript of hearing

June 11, 1956

Members of the Commission: Harry Albert, Chairman; Hayden Jones, Member; Winston W. Crouch, Member.

Appearances: Harold W. Kennedy, County Counsel, by his Deputy, Baldo Kristovich, Esq., for the Civil Service Commission; William T. Pillsbury, Esq., for Mr. Thomas W. Nelson.

2 *Proceedings*

Before the Civil Service Commission of the County of Los Angeles, 510 North Main Street, Los Angeles, California, 9:30 A.M., Monday, June 11, 1956, In the Matter of Appeal from Discharge by Thomas W. Nelson; Harry Albert, Chairman, presiding.

* * * * *

Chairman HARRY ALBERT. The meeting will come to order. May the record show that the Commission has met this morning to hear the appeal of Thomas W. Nelson from discharge from the position of Medical Social Worker, Bureau of Public Assistance, Department of Charities.

Is Mr. Nelson present?

Mr. WILLIAM T. PILLSBURY. Yes; Mr. Nelson is present.

Chairman ALBERT. May the record show that Mr. Nelson is present and represented by William T. Pillsbury, Attorney at Law; that the Department is represented by Mr. Alvin Karp and that legal counsel for the Department is Baldo Kristovich.

May the record further show that all members of the Commission are present; Commissioner Hayden Jones, Commissioner Winston W. Crouch, and Commissioner Harry Albert, and that the Commission is being advised by Andrew O. Porter, Deputy County Counsel, who acts only as legal ad-

viser to us and in no way takes part in the deliberations
3 at the conclusion of the hearing.

The record in this matter is being taken by a reporter from the Stenotype Company, 2601 West Olympic Boulevard, and a transcription of the hearing can be obtained by paying the usual fees of that company. The Commission does not provide a copy of the transcript.

Would you please state the phone number of the company and the name of the reporter?

The REPORTER. DUnkirk 8–1448. Betty Revell.

Chairman ALBERT. Are you ready to proceed?

Mr. PILLSBURY. Ready.

Mr. KRISTOVICH. Ready, Your Honor.

Stipulations

It will be stipulated between the County of Los Angeles, Department of Charities, the employer, and Thomas W. Nelson, the employee, who asked for this hearing, that Thomas W. Nelson was first employed by the County of Los Angeles, Department of Charities, on March 2, 1949, as a Social Worker, Temporary, (Emergency) and that on May 18, 1949, he resigned from said position for personal reasons.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that Thomas W. Nelson was again employed by the County of Los Angeles, Department of Charities, on April 1, 1952, as a Medical Social Worker,
4 Temporary (Emergency) and continued in said position until June 17, 1952, when he was appointed a Medical Social Worker, Temporary, in which position he continued until June 16, 1953, when he was appointed to the position of Medical Social Worker, Permanent.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that Thomas W. Nelson signed the County Loyalty Oath on April 1, 1952, and the State Loyalty Oath on April 1, 1952.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that on September 7, 1954, Mr. Nelson answered "No" to question 15 "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Work Director.

Will you so stipulate?

Mr. PILLSBURY. What was that date?

Mr. KRISTOVICH. September 7, 1954.

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

5 It is further stipulated that on April 4, 1956, when Thomas W. Nelson was so employed as a Medical Social Worker, Permanent, by the County of Los Angeles, Department of Charities, he was personally served with a copy of the order adopted by the Board of Supervisors of the County of Los Angeles on February 19, 1952, concerning the possible appearance of certain employees before the House Committee on Un-American Activities, which order declared and set forth the duties of such employee upon said appearance.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that while so employed as a Medical Social Worker, Permanent, said Thomas W. Nelson was subpoenaed to appear before the United States House of Representatives Committee on Un-American Activities, and that on April 20, 1956, pursuant to said subpoena Thomas W. Nelson was put under oath and was asked a series of questions by committee members and the counsel of said committee.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

May we please mark at this time——

6 Chairman ALBERT. Is this also by stipulation?

Mr. KRISTOVICH. Yes. May we please mark at this time as Department Exhibit 1 for identification a transcript of the hearing before the Committee on Un-American Activities of the House of Representatives, dated April 20, 1956; place, Los Angeles, California, covering the testimony of Thomas W. Nelson and prepared by the Alderson Reporting Company. I just want to mark it for identification now, Mr. Chairman.

It will now be further stipulated——

Chairman ALBERT. Just for identification?

Mr. KRISTOVICH. Yes.

Mr. PILLSBURY. Excuse me for interrupting. I will so stipulate.

Mr. KRISTOVICH. It is further stipulated that this transcript marked 1 for identification, consisting of pages 561 to and including page 594, is a true and correct transcript of the proceedings which took place at the hearing before the Committee on Un-American Activities of the House of Representatives on April 20, 1956, in Los Angeles, California, when Thomas W. Nelson appeared as a witness.

Will you so stipulate?

Chairman ALBERT. Have you had a chance to look at it?

Mr. PILLSBURY. My only reservation on that is that we haven't had time to completely examine it. Mr. Nelson skimmed through it and it appears that it is a true transcript of the testimony.

I will so stipulate that it be admitted with the reservation that before we leave today any corrections may be made.

Mr. KRISTOVICH. All right, we will accept that stipulation.

Offers in evidence

At this time we will offer into evidence as Department Exhibit 1 said transcript.

Chairman ALBERT. So ordered and marked Exhibit 1.

Mr. PILLSBURY. We will stipulate that it may go into evidence with the provision that we may make corrections.

Chairman ALBERT. You may raise objections to any of the evidence in it?

Mr. PILLSBURY. No; merely as to the correctness of the transcript.

Chairman ALBERT. Yes.

Mr. PILLSBURY. Fine.

Mr. KRISTOVICH. We will accept that stipulation. We offer that into evidence.

Chairman ALBERT. It has been accepted.

Mr. KRISTOVICH. Thank you.

8 It is further stipulated that on May 2, 1956, while Thomas W. Nelson was employed by the County of Los Angeles, Department of Charities, as a Medical Social Worker, Permanent; a letter of discharge, a copy of which we ask be marked Exhibit 2, was personally delivered to and served on Thomas W. Nelson. Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation and offer it into evidence at this time.

Chairman ALBERT. It will be admitted and marked Exhibit 2.

Mr. KRISTOVICH. It is further stipulated that on May 10, 1956, Thomas W. Nelson addressed a letter to the County Civil Service Commission and Mr. William A. Barr, Superintendent of Charities, a copy of which we ask be marked Department Exhibit 3, requesting a hearing before the Civil Service Commission, and that this letter was received by the addressees on May 11, 1956.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We accept that stipulation and offer into evidence the copy of that letter as Department Exhibit 3.

Chairman ALBERT. So ordered and marked.

Mr. KRISTOVICH. At this time the Department will rest.

9 Chairman ALBERT. If you are going to have any witnesses, I am going to ask them to be sworn. Is anybody going to testify in this case?

Mr. PILLSBURY. Perhaps Mr. Nelson will testify.

Chairman ALBERT. We will wait then.

Mr. PILLSBURY. There will be no other witnesses.

Stipulations

On behalf of the employee, Mr. Nelson, we offer to stipulate that the employee's entire personnel record be introduced into evidence and marked Employee's Exhibit 1.

Mr. PETRIE. That would be Employee's Exhibit A.

Mr. PILLSBURY. Excuse me, marked Exhibit A and incorporated into the record of this proceeding.

Mr. KRISTOVICH. So stipulated.

Chairman ALBERT. May we also have a stipulation that in case we so desire we may make photostatic copies of the originals or put in a copy?

Mr. PILLSBURY. That is agreeable.

Mr. KRISTOVICH. We will so stipulate.

Mr. PILLSBURY. So stipulated.

Chairman ALBERT. The additional stipulation then will be admitted and marked as Exhibit A.

Mr. PILLSBURY. We further offer to stipulate and request that the record include the introductory statement made by the House Committee on Un-American Activities as to the purpose and function of their hearings, which statement was made, I believe, on April 16, 1956, in Los Angeles on the opening day of the hearings, and request when that record is obtained that it be incorporated in the hearing as Employee's Exhibit B.

Chairman ALBERT. You have reference to the scope of their enquiry and so forth?

Mr. PILLSBURY. The scope and purpose of the inquiry.

Mr. KRISTOVICH. We will so stipulate.

Mr. PILLSBURY. Perhaps to further clarify it, I understand that the statement was made by Congressman Moulder.

Mr. KRISTOVICH. Are we to understand that you are going to get a copy of that and furnish it for the record?

Mr. PILLSBURY. Yes.

Mr. KRISTOVICH. So stipulated.

Chairman ALBERT. So ordered. When the record is obtained, it will be marked as the next exhibit in order for the Appellant.

You will see that Mr. Kristovich has a chance to check it before?

Mr. PILLSBURY. Yes.

11 Now in the interest of time, perhaps we can further stipulate, even though it possibly is a duplication of the letter of Mr. Nelson marked Exhibit 3, that upon being questioned by the Congressional Committee, Mr. Nelson to all questions exercised his constitutional rights under the First Amendment of the Constitution of the United States and under the Fifth Amendment of the Constitution of the United States.

Mr. KRISTOVICH. I don't think I can so stipulate because the record speaks for itself, Mr. Pillsbury.

Mr. PILLSBURY. The employee does not care to offer any evidence or testimony at this time. He merely wishes to make a statement through counsel as to his position in regard to his discharge.

Mr. ANDREW O. PORTER. What do you mean by at this time?

Mr. PILLSBURY. We are asking for a continuance.

Mr. KRISTOVICH. Are you ready to rest?

Counsel rests

Mr. PILLSBURY. We are ready to rest.

Mr. KRISTOVICH. We have no further rebuttal, we rest also.

Chairman ALBERT. Your case is closed? Your case was closed when you put in Exhibit B?

Mr. PILLSBURY. Yes.

Chairman ALBERT. Now you just want to argue?

Mr. PILLSBURY. That is all.

Argument by Mr. Kristovich

12 Mr. KRISTOVICH. May it please the Commission, we wish to point out that this employee was discharged by the Department of Charities pursuant to Government Code 1028.1, which Section specifically provides as follows:

"Duty of public employee to appear before investigating body or committee and answer questions: Effect of failure, etc., to appear or answer questions. It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the State or local agency by which such

employee is employed to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

"(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

"(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

"(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of employee's
13 membership advocated the forceful overthrow of the Government of the United States or of any state.

"(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

We submit, Your Honor, that an examination of Exhibit 1 will disclose that this employee, Thomas W. Nelson, appeared before the Un-American Activities Committee of the House of Representatives and that he failed and refused to answer questions dealing with whether or not he was a member of the Communist Party at various times commencing with 1947 as will appear in the transcript on page 568 as follows: The question is by Mr. Tavenner, Counsel for the Committee.

"Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan.

"Mr. NELSON. In response to that question, Mr. Tavenner, I assert that the only purpose of your asking
14 that question is to intimidate me by putting out words such as communism and Communist and subversive with the idea of causing citizens to refrain from attending any sort of meetings or joining any sort of organizations for fear that at some time they may be labeled as subversive or un-American, and, thereby, causing a person to lose his employment.

"I think that that is an unjust question to put to me, and I decline to answer on the basis of the First Amendment supplemented by the Fifth."

There are other questions too numerous to take the time at this time, with the record before the Court, to give all of them.

One of the questions I will point out is at page 575 by Mr. Jackson wherein he said:

"Have you at any time been a member of the Communist Party?

"Mr. NELSON. I say again that to toss such a word as Communist and Communist Party and force and violence, associated with the name of the witness, is not good.

"And I say it is out of line, and I decline to answer on the basis of the First Amendment supplemented by the Fifth."

It is our position, if it may please the Commission,
15 that the record throughout indicates that this witness refused to answer questions put to him as set forth in Section 1028.1 of the Government Code. He did perhaps and in each instance raise the First and Fifth Amendments of the Constitution. It is our position that that is not sufficient grounds for him not being discharged at this time.

The charge against him is insubordination. That is, his failure to appear and answer questions. We realize, as was set forth in Steinmetz vs. California State Board of Education in 44 Cal. 2d 816, that he has the privilege to raise the First and Fifth Amendments, but whether he wishes to continue his employment or to raise the constitutional privileges given to him is his choice, and since under the State Law and pursuant to notice served on him he was required to answer these questions specifically, and if he did not wish to continue his

employment, naturally, he did not have to answer the questions, he could be insubordinate, and that is just what he was in this instance. On the other hand, if he felt that he would rather not answer the questions and no longer work for the Government agency, that is his privilege.

However, we contend that he cannot say in one breath that he doesn't want to obey a lawful order of his superiors because he wants to be able to raise his constitutional privileges under the First and Fifth Amendments. We say, if he wishes
16 to raise the constitutional guarantees he has under the First and Fifth Amendments, why he has that privilege, but he certainly cannot be insubordinate while he is doing that and he clearly was in this case because he failed to answer the questions that were put to him under the State Law by a committee duly authorized by Congress.

On that basis we contend, and pursuant to the authority of Steinmetz vs. The Board of Education which held Section 1028.1 of the Government Code constitutional, that this employee's discharge should be upheld by the Commission.

Argument by Mr. Pillsbury

Mr. PILLSBURY. If the Board please, the position of the employee, Mr. Nelson, is that when called before a Congressional Committee he exercised in proper form his basic and inherent constitutional rights; that, therefore, when Section 1028.1 of the California Government Code is applied to this employee, he is being deprived of his constitutional rights. The theory, I presume, of the County being that the exercise of the constitutional right as to free speech and privilege against self incrimination carries with it an imputation of guilt which is erroneous and disregards the historical evolution of the Fifth Amendment, the basic concept so contained; and, therefore, the Government Code Section 1028.1 is unconstitutional; that in its net effect it deprives an employee of a county, as Mr. Nelson was, of the right to exercise his
17 basic constitutional rights and places the employee in the position of either termination for refusal to answer, or when Section 1028 and other provisions of the Luckel Act are applied that he is also discharged if he does answer. The

whole concept of the County is apparently based on the fact that there is an imputation of guilt under the exercise of rights under the First and Fifth Amendments.

As previously stated, the concept, I believe, and the employee's position is, is erroneous, that the Fifth Amendment was traditionally formulated to protect the innocent as well as the guilty. The United States Supreme Court in the recent case of Slochower vs. The Board of Higher Education of the City of New York, stated an opinion by Justice Clark that an employee could not be fired or terminated per se for the exercise of the Fifth Amendment.

The position of the employee further is that the Act in question; the Section 1028.1, is a violation of the Fourteenth Amendment of the United States Constitution in that it is state action which deprives, when applied to the defendant for exercising his constitutional rights, deprives the defendant or in this case the employee, of his right to employment, his right to free speech without due process of law.

We further contend that the Government Code Section as applied to this employee is in its net effect a bill of attainder which is contra to the Constitution of California and the United States in that when an employee is arbitrarily singled out for questioning before a committee and he exercises his constitutional rights and then is terminated, the net effect and application of the statute is that a bill of attainder has been placed against the employee.

We further take the position that the Luckel Act, specifically Section 1028.1, is a violation of Article 1, Section 1 and Article 4, Section 25, Subsection 33 of the California Constitution in that it is special legislation which is prohibited by the Constitution when a general law would be sufficient, and, further, that the judicial function as given to a committee and under the powers granted to various employers under Section 1028.1, that there is a violation of the separation of powers concept under Article 3, Section 1 and Article 5, Section 1 of the California Constitution.

Briefly, to summarize, therefore, the position of the employee is that Section 1028.1 is unconstitutional when applied

to this employee and the aspects previously mentioned that his employment is terminated, his right to employment is terminated merely because of the exercise of his constitutional rights. On that we rest our case.

Argument by Mr. Kristovich

Mr. KRISTOVICH. In answer to counsel for the employee, we wish to point out that his argument as to the consti-
19 tutionality of Section 1028.1 has been completely and very ably answered by the Supreme Court of the State of California in Steinmetz vs. The State Board of Education, 44 Cal. 2d 816, and we want it clearly understood that his concept of the theory of the County of Los Angeles, that we are imputing guilt to this employee for his failing to answer questions because he stood on his constitutional rights is absolutely erroneous.

The theory of the County's case is that this employee was an employee of the County of Los Angeles, and under Section 1028.1 of the California Government Code, he was obligated to answer the questions that were put to him, and his failure to obey that law was insubordination. The Supreme Court in the Steinmetz case at page 824 said, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment."

So this employee had his choice. He had the opportunity to make a choice either to choose to continue with his public employment and obey the laws which our Supreme Court has held to be constitutional or he could say, I will be insubordinate and refuse to answer the questions, and that is exactly what this employee did.

The Supreme Court in the Steinmetz case also answered the argument that this was special legislation, this was a
20 bill of attainder. All of those arguments were considered and ruled inapplicable. The Supreme Court held that the Government Code Section 1028.1 was a constitutional law and would apply in the State of California, and that decision was in July 1955, which was a long time prior to the

date that this employee appeared before the Un-American Activities Committee.

In connection with counsel's calling attention to Slochower vs. The New York Board of Education, decided by the Supreme Court of the United States on April 9, 1956, we wish to point out that in that case the employee, as counsel said, was arbitrarily discharged for his failing to answer the questions without an opportunity for a hearing and without following the law. The law in New York expressly provided that an employee who had tenure would be given a hearing. The County Civil Service Law provides the same thing. We have the hearing. The hearing is today. This employee has been given the opportunity to appear and explain his position. He has appeared, he has explained it, and, therefore, we have followed the requirements of due process which were not followed in the Slochower case.

We submit that in that case, it clearly indicated that if due process of the existing law was followed that there would be nothing wrong with the discharge of an employee who failed to answer the questions on grounds of insubordination, and we submit that here we have followed the due process. The notice was served upon this employee within the ten days, he requested his hearing and we gathered here today for hearing, so we submit to the Honorable Commission that the discharge by the County of Los Angeles, Department of Charities, should be upheld:

Mr. PILLSBURY. To answer counsel's very able argument, in one respect I was erroneous in stating that the position of the County was based upon the imputation of guilt from the exercise of constitutional rights. To clarify that, I meant to state that the position of the employee is—or the position of the County is to apply, as counsel stated, Section 1028.1 on the grounds of insubordination. But, the entire legislative act, the Luckel Act, and specifically this section in question, the theory of the law is based upon an imputation of guilt for the exercise of a constitutional right before a duly constituted committee. Otherwise, how could it be claimed by a legislative act that it would be insubordinate to lawfully exercise a constitutional right? The connotation of insubordination

is always the violation or the refusal to comply with a lawful request or a lawful order of a superior during the course of employment.

In this instance Mr. Nelson is being terminated merely because, as a citizen, he exercised his constitutional rights, as did Professor Slochower, before a Congressional Committee, that he certainly has done nothing wrong. He has not
22 been guilty of misconduct and he has not in effect been insubordinate to his superior officers in his employment in the County, and our position is that the section under which the County is acting is in and of itself unconstitutional in that it makes a citizen guilty of insubordination, and, therefore, the following loss of his employment because he exercises his basic rights.

I would further like to point out and distinguish the case of Steinmetz vs. The Board of Education, as cited by Counsel. I think the Steinmetz case in its entirety can be distinguished from Mr. Nelson's situation in that the majority opinion in the Steinmetz case expressly concludes, I think counsel will concede, that Professor Steinmetz did not exercise his constitutional rights clearly and in a proper manner when he appeared before the State Board of Education. Therefore, the portion read by counsel into the record that, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him," is predicated on the case because the majority turned on the fact that Professor Slochower did not expressly exercise a constitutional right—pardon me, correction, Professor Steinmetz did not clearly exercise a constitutional right in refusing to answer the questions propounded by the State Board of Education. Therefore, I think the entire Steinmetz case is distinguishable on its face and the conclusions upon which it is based from Mr. Nelson's case at the present time.

23 Mr. KRISTOVICH. Just to keep the Commission properly advised, I will concede that in the Steinmetz case, the Court did say this concerning these amendments on page 824.

"Petitioner's refusal to answer was not based upon a claim of privilege against self-incrimination under the Fifth Amend-

ment to the federal constitution or section 13, article 1 of the state constitution, and, accordingly, he is precluded from relying on these constitutional provisions. It is settled that a witness is required to claim this privilege, that it is a personal privilege, solely for the benefit of the witness and that it is deemed waived unless invoked."

Citing a United States Supreme Court case, "Moreover, a person may properly be required to disclose information relevant to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure, under some circumstances, may amount to self-incrimination.

"Pockman v. Leonard, Christal v. Police Commission, Garner v. Board of Public Works, Adler v. Board of Education:" Then the quote I gave before comes, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment." And with that we rest.

24 Mr. PILLSBURY. We keep going back and forth..

Mr. KRISTOVICH. I know we get to close. We opened.

Argument by Mr. Pillsbury

Mr. PILLSBURY. One last word. To make my position clear in these distinguishing factors, I submit, as previously stated, that inasmuch as the California Supreme Court concluded as a matter of fact in the Steinmetz case that Professor Steinmetz had not exercised the constitutional privilege, that the discussion which the Court engaged in regarding the exercise of constitutional privileges and the discussion as mentioned by counsel as to the self incriminatory basis and answering questions as to fitness, is pure dicta and is not necessary to the decision of the Supreme Court in the Steinmetz case, and, therefore, can be distinguished.

Chairman ALBERT. Do you want to answer that?

Mr. KRISTOVICH. We will rest.

Mr. PILLSBURY. We will rest.

Chairman ALBERT. The matter will be submitted, and, Mr. Pillsbury, as soon as you can you will see that Exhibit B is presented?

Mr. PILLSBURY. I shall, sir.

Chairman ALBERT. The Department will present the employee's record or a copy of it.

Mr. PILLSBURY. I will furnish the copy of the Committee's statement.

25 Mr. PETRIE. That is B.

Chairman ALBERT. And the Department will furnish A for you client, or a copy thereof which you can check.

Mr. PILLSBURY. Thank you.

Chairman ALBERT. Again, I want to thank you for making our work very light this morning.

The matter will be submitted.

* * * Whereupon the hearing adjourned at ten-fifteen o'clock * * *

26 [Reporter's certificate to foregoing transcript omitted in printing.]

27 *Employee's Exhibit B*

HEARINGS BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES, HOUSE OF REPRESENTATIVES

Date: April 16, 1956, April 20, 1956.

Place: Los Angeles, California.

28 Communism in the Los Angeles Area

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON UN-AMERICAN ACTIVITIES,
LOS ANGELES, CALIFORNIA,
Monday, April 16, 1956.

PUBLIC HEARING

The subcommittee met, pursuant to call, at 9:30 o'clock a.m., in Room 518, Federal Building, Los Angeles, California, Honorable Morgan M. Moulder (chairman of the subcommittee) presiding.

Present: Representatives Morgan M. Moulder (chairman of the subcommittee), Clyde Doyle, Donald L. Jackson and Gordon H. Scherer.

Staff members present: Frank S. Tavenner, Jr., counsel; William Wheeler and Courtney Owens, investigators.

Mr. MOULDER. The committee will come to order.

Let the record show that the Honorable Francis E. Walter, chairman of the full Committee on Un-American Activities of the United States House of Representatives, pursuant to the provisions of law establishing this committee, duly appointed Representative Clyde Doyle of California, on my right, Representative Donald L. Jackson of California, immediately on my left, and Representative Gordon H. Scherer of Ohio,
29 on the extreme left, and myself, Morgan M. Moulder of Missouri, chairman, as a subcommittee to conduct hearings beginning in Los Angeles today.

Mr. TAVENNER. Mr. Chairman, the system isn't working here. Wait until it gets going. I don't believe the people can hear you.

Mr. MOULDER. The full membership of the subcommittee is present.

The Congress of the United States has imposed upon this committee the duty of investigating the extent, character and objects of un-American propaganda activities in the United States, and the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or is of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

This committee has devoted much time in the past years to the investigation of the subject of communism, and the committee has endeavored to keep Congress well informed of the extent and the objects of the Communist conspiracy within this country.

In the performance of this huge task the committee, in its reports to Congress, has made in excess of 40 recommendations for legislation by Congress designed to aid in the

30 fight against this Communist conspiracy, all but a few of which have been enacted into law.

In carrying out the statutory duties imposed upon this committee, "the committee proposes to continue its investigation of the extent, character and objects of Communist activities in this general area and in all other areas to which information developed may lead, as well as to investigate all other questions in relation thereto which would aid Congress in any necessary remedial legislation."

In 1951 the committee began an investigation which resulted in a series of hearings related to the extent, character and objects of Communist Party activities, of what is known as the Northwest Section of the Communist Party, in the city of Los Angeles, commonly referred to as the Hollywood Section of the Communist Party.

This hearing will relate in part to a branch of the Hollywood Section of the Communist Party which has not heretofore been the subject of investigation by this committee.

This branch of the Communist Party, the committee is informed, is composed exclusively of musicians. Inquiry will be made as to the activities of the members of this group with special reference to their activities in the Independent Progressive Party, and the significance, if any, that such activities import.

The committee's attention has been drawn to certain
31 public interviews with a former Soviet intelligence officer which indicates a far-reaching knowledge on his part of conditions within the Soviet Union. It is believed that his background and experience has been such that his appearance as a witness should be a valuable aid to the committee in understanding in its proper perspective Communist Party control within the arts as practiced in the Soviet Union.

This witness also will be asked to give the committee his analysis of the present Soviet policy as announced in the twentieth party congress of the Soviet Communist Party held in Moscow in February of this year.

Here it should be noted that views of other leading authorities in this field will be the subject of a committee report

which is expected to be ready for publication within the next few weeks.

Several groups entirely unfamiliar with the investigative background of this hearing have protested against the holding of this hearing.

In a communication from one of these groups it is stated: "We believe, as you have quite sincerely announced, that the subpenaing of some 35 local musicians is unrelated to the internal problems of the Musicians Union. Yet, we believe, the timing of the committee hearing is most unfortunate and certain to create public confusion."

I want to take this opportunity on behalf of the com-
32 mittee to state concretely and with emphasis that this committee is not interested in any dispute between employers and employees or between one union and another union. Neither is it interested in the internal affairs of any union. It is a conclusive negation to the charge that this hearing is being held for the purpose of interfering in the internal affairs of a union that this investigation was begun in June of 1955, that the hearing was set for November of 1955, that because of conflicts in appointments the hearings were continued, and that the present date for the hearing was fixed by the committee at its first session in early January of this year.

The only—and I quote from this communication—"public confusion" which could result is that which certain groups opposed to this committee seemed determined to create by the unfounded charges they persist in making. And that is the only public confusion that has been created, and that has been created as a result of that.

In the course of this investigation Communist Party activities of other individuals in the field of labor, business and government have come to the attention of the staff, and will also be the subject of investigation and of this hearing.

The committee took extensive testimony in Chicago during December of 1955, and in the city of Washington in February and March, relating to Communist Party activities of em-
ployees in various agencies of the United States Govern-
33 ment. During the course of those hearings testimony was received divulging the existence of heretofore un-

disclosed Communist Party cells which operated in various government agencies at various locations throughout the country.

There will be heard, before the conclusion of these hearings, certain witnesses whose identity was disclosed during the course of the above hearings.

The committee has received, since its arrival in Los Angeles, additional testimony touching on this subject from which it is apparent additional investigation will be required, and in all probability future hearings will be held in Los Angeles.

It is a standing rule of this committee that any person who is named in the course of the conduct of the hearings of this committee and who is identified or referred to as a member of the Communist Party shall be given an opportunity to appear before this committee if he so desires for the purpose of denying or explaining any testimony adversely affecting him or her.

Should such an occasion arise such an individual concerned should communicate with any member of this committee or any member of the staff.

Those present are reminded that they are guests of the committee as an agency of our government. A disturbance of any kind or audible comment during the course of
34 the testimony, either favorable or unfavorable to any witness or to the committee, will not be tolerated.

For such infraction of this rule the offender immediately will be asked to leave the hearing room.

Under the rules of the House of Representatives of the United States, televising and broadcasting of all House committee hearings are prohibited. Still photographs are permitted while the witness is not testifying.

I might also announce that the rules of those in control of this building prohibit smoking in the hearing room during the course of the hearings.

Are you ready to proceed, Mr. Tavenner?

Mr. TAVENNER. Yes, sir.

* * * * * *

35 *Department's Exhibit 1*

Communism in the Los Angeles Area

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON UN-AMERICAN ACTIVITIES,
LOS ANGELES, CALIFORNIA,
Friday, April 20, 1956.

PUBLIC HEARING

A subcommittee of the Committee on un-American Activities met at 9:30 a.m., pursuant to recess, in Room 518, Federal Building, Los Angeles, California, Honorable Morgan M. Moulder (chairman of the subcommittee) presiding.

Present: Representatives Morgan M. Moulder (presiding), Clyde Doyle, Donald L. Jackson and Gordon H. Scherer.

Present also: Frank S. Tavenner, Jr., counsel; and William Wheeler and Courtney Owens, investigators.

Mr. MOULDER. The Committee will be in order.

Mr. Tavenner, would you call your first witness.

Mr. TAVENNER. Mr. Thomas W. Nelson.

Mr. MOULDER. Will you hold up your right hand and be sworn.

Do you solemnly swear the testimony which you are about to give will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. NELSON. I do so affirm.

36 *Testimony of Thomas W. Nelson, accompanied by his counsel, Rose S. Rosenberg*

Mr. TAVENNER. Will you state your name, please, sir.

Mr. NELSON. Thomas W. Nelson.

Mr. TAVENNER. Will counsel accompanying the witness please identify herself for the record.

Mrs. ROSENBERG. Rose S. Rosenberg, b-e-r-g.

Mr. TAVENNER. When and where were you born, Mr. Nelson?

Mr. NELSON. I was born February 24, 1913, in Little Rock, Washington.

Mr. TAVENNER. Where do you now reside?

Mr. NELSON. In Long Beach.

Mr. TAVENNER. How long have you lived in Long Beach?

Mr. NELSON. Approximately 4 years.

Mr. TAVENNER. Will you tell the committee, please, what you formal educational training has been.

Mr. NELSON. I have been educated in the public schools of the State of Washington. I was graduated from the Washington schools in Olympia, Washington. In my grammar school education I was valedictorian of my class. From Olympia High School I was salutarian of a class of 160 pupils. I have a Bachelor's degree from Western Washington College of Education. I have had one year of graduate training at the University of Washington.

Mr. TAVENNER. When did you receive your Bache-
37 lor's degree?

Mr. NELSON. In 1937?

Mr. TAVENNER. You may proceed.

Mr. NELSON. The graduate training at the University of Washington completes my formal education.

Mr. TAVENNER. When did you complete your graduate training?

Mr. NELSON. In 1941.

Mr. TAVENNER. Will you tell the committee, please, what your employment has been since 1941.

Mr. NELSON. I have been employed by the United States Government from 1941 to 1945. I was employed by the United Nations from 1945 to 1947. I have been employed by the United States Government from 1947 to 1949. I have been employed by Los Angeles County in 1949, and I have been employed by the Monrovia-Duarte Evening High School, 1949 to 1951.

Mr. TAVENNER. What school is that?

Mr. NELSON. Monrovia-Duarte Evening High School.

Mr. TAVENNER. Where is that located?

Mr. NELSON. It is located in Monrovia, California.

Mr. TAVENNER. Were you employed as a teacher there? Is that what you mean?

Mr. NELSON. Yes, sir; that is what I mean.

Mr. TAVENNER. Very well, sir.

38 Mr. NELSON. May I proceed?

Mr. TAVENNER. Yes.

Mr. NELSON. 1951 to 1952 I was employed by the State of California. In 1952 I was employed by the Arcadia Unified School District. Since 1952 I have been employed by Los Angeles County.

Mr. TAVENNER. Did you mean that your employment between 1951 and '52 by the State of California was in the teaching profession?

Mr. NELSON. No, sir.

Mr. TAVENNER. What was the nature of that employment?

Mr. NELSON. I was a State parole officer.

Mr. TAVENNER. State parole.

What has been your employment since 1952?

Mr. NELSON. With Los Angeles County.

Mr. TAVENNER. In what capacity?

Mr. NELSON. A medical social worker.

Mr. TAVENNER. I understood you to say that from 1941 to 1945 you were employed by the United States Government. In what capacity were you employed? That is, what was the nature of your employment?

Mr. NELSON. For some months I was employed as a field grant supervisor at Yakima, Washington, where I was assigned to the administration of the federal grant program administering relief to migratory farm laborers. Later I was pro-

39 moted to regional grant supervisor, supervising the program throughout the States of Oregon, Washington and Idaho, with headquarters at Portland, Oregon. When the Department of Agriculture farm security administration program was transferred to the War Food Administration office of Labor, I transferred to that agency in 1943, and continued with it until 1945.

Mr. TAVENNER. During that period of time did you have any assignment in the city of Washington in the Agriculture Department, Washington, D.C.?

Mr. NELSON. I did not.

Mr. TAVENNER. I believe you said that from 1945 to 1947 you were employed by United Nations. What was the nature of your employment during that period of time?

Mr. NELSON. I was a welfare officer in the Displaced Persons program, assigned to the American zone of Germany.

Mr. TAVENNER. What was the general nature of your duties there?

Mr. NELSON. The general nature of my duties was to set up and supervise the welfare programs for the victims of Nazi terror who were housed in displaced persons' camps as a military measure until such time as they might be returned to their lands of origin.

Mr. TAVENNER. I believe you told us that from 1947 to 1949 you were again employed by the United States Government. Will you tell us, please, in what capacity?

Mr. NELSON. I was a welfare officer with Military Government in Japan.

Mr. TAVENNER. Where were you stationed in Japan?

Mr. NELSON. I was stationed at Nagoya, spelled N-a-g-o-y-a.

Mr. TAVENNER. Will you tell the committee, please, the reason for the termination of your services in Japan?

Mr. NELSON. Chairman Moulder, in view of the introductory remark which you made to this group on last Monday, wherein you stated that it was not the intention of this committee to delve into the relationship between employer and employee, I wonder if you would ask Mr. Tavenner to kindly withdraw that question.

Mr. MOULDER. The request is denied.

(The witness confers with his counsel.)

Mr. NELSON. Will you repeat the question, please?

Mr. TAVENNER. Will you read him the question?

(The pending question was read by the reporter.)

Mr. NELSON. I would—I will decline to answer that question on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution.

Mr. TAVENNER. What was the date of the termination of your services in Japan?

(The witness confers with his counsel.)

Mr. NELSON. In response to the question, I would say that, in my opinion, that question is beyond the area of juris-
41 diction of this committee as set up by your function, according to my understanding, and I respectfully decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. You mean we can't investigate Communist subversion even in allied military government to the United States?

Mr. NELSON. I don't believe there is anything in the record with regard to that, Mr. Scherer.

Mr. SCHERER. There may be before we get through.

Mr. TAVENNER. Were you released from military service under the provisions of Public Law 808 as a security risk and returned to the United States from Japan?

Mr. NELSON. Mr. Tavenner, I was never in military service. I was classified 2B because of the essential nature of my work at War Food Administration.

Mr. TAVENNER. You were subject to military authority in Japan, were you not?

Mr. NELSON. I was a civilian employee of the Department of the Army, Military Government.

Mr. TAVENNER. Yes, but you were subject to military authority while there?

Mr. NELSON. I was.

Mr. TAVENNER. You were? I didn't understand you.

Mr. SCHERER. He said he was; certainly.

Mr. TAVENNER. Very well then. Were you returned
42 to the United States under the provisions of Public Law 808 from Japan as a security risk?

(The witness confers with his counsel.)

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Why were you returned?

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. I ask you direct the witness to answer the question, Mr. Chairman, as to why he was returned.

Mr. MOULDER. As requested by Mr. Scherer, the witness is directed to answer.

Mr. NELSON. I decline to answer the question on the basis of the privileges allowed me under the First Amendment, supplemented by the Fifth Amendment to the Constitution.

Mr. TAVENNER. Public Law 808 provides that, within 30 days after removal, any person shall have opportunity personally to appear before the official designated by the Secretary concerned, and be fully informed of the reasons for such removal, and to submit, within 30 days thereafter, such statements or affidavits or both as he may desire to show why he should be retained and not removed.

Did you resort to that remedy provided by Public Law 808?

Mr. NELSON. Regardless of in which manner this matter is approached, I shall continue to decline to answer.

43 With respect to this specific question, I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. TAVENNER. Actually you did not appeal from the decision removing you, or take any steps to avoid it, did you?

(The witness confers with his counsel.)

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan.

Mr. NELSON. In response to that question, Mr. Tavenner, I assert that the only purpose of your asking that question is to intimidate me by putting out words such as communism and Communist and subversive with the idea of causing citizens to refrain from attending any sort of meetings or joining any sort of organizations for fear that at some time they may be labelled as subversive or un-American, and, thereby, causing a person to lose his employment.

I think that that is an unjust question to put to me, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Since you raise the question, I am surprised that you were employed by government—true, it is

State and county and city government—since your dismissal from Japan under the circumstances.

That does interest me.

(The witness confers with his counsel.)

Mr. JACKSON. May I ask a question?

Mr. MOULDER. Mr. Jackson.

Mr. JACKSON. Do you consider the Communist Party to be an organization which one should feel free to join and with the membership of which one should feel free to associate?

Mr. NELSON. Mr. Jackson——

Is that the name?

Mr. JACKSON. That is correct.

Mr. NELSON. In response to that question, I would repeat that this committee is out of its jurisdiction in view of the fact that the Supreme Court has already told you fellows that you may not investigate where you do not have the right to legislate.

And, since you do not have the right to legislate in the field of associations of citizens, I feel that the question is out of order, and I decline to answer it on the basis of the First Amendment supplemented by the Fifth.

Mr. JACKSON. Let me say one thing only, Mr. Chairman:

If the Congress of the United States, or any of its committees, does not have the right to legislate with respect to federal employees, or to make inquiry into matters concerning federal employees, past and present, who are members or have been members of the Communist Party, then there is certainly something very awry as far as the investigating power of the Congress is concerned.

This is one area in which there should be absolutely no question as to the jurisdiction of the Congress.

The Congress would be derelict indeed if it permitted a situation to go unnoticed in which there were past or present members of the Communist Party employed, especially in light of the action of the Congress of the United States in outlawing the Communist Party.

Mr. DOYLE. Mr. Chairman?

Mr. MOULDER. Mr. Doyle.

Mr. DOYLE. Did I understand, Mr. Nelson, that you are contending that the Congress of the United States cannot legislate in the field of military, for instance, in Japan or foreign countries, in the American military? Do I understand that is your contention, that that is not in the jurisdiction of the United States Congress?

I so understood. I was quite shocked to hear you say it.

Mr. NELSON. Mr. Chairman, I wonder if you would kindly ask the man to read my answer back to Mr.——

What is the name of the gentleman there?

Mr. DOYLE. You know who I am. I'm Doyle of California.

Mr. NELSON. Thank you.

46 Mr. MOULDER. Let's proceed.

Mr. DOYLE. No. I want the answer, please, to that. The gentleman wanted his statement read. I think it would be good to have it read.

Mr. MOULDER. All right.

As requested by the witness and by Congressman Doyle of California, will the reporter please read the answer which has caused the comment that is now being made.

(Whereupon, the record was read by the reporter, as follows:

"In response to that question, I would repeat that this committee is out of its jurisdiction in view of the fact that the Supreme Court has already told you fellows that you may not investigate where you do not have the right to legislate.

"And, since you do not have the right to legislate in the field of associations of citizens, I feel that the question is out of order, and I decline to answer it on the basis of the First Amendment supplemented by the Fifth.")

Mr. MOULDER. Very well.

Any more questions?

Mr. DOYLE. I was wondering if the gentleman cared to answer my question, if he still contended that the United States Congress did not have power and jurisdiction to

47 legislate in the field of the American military wherever it was in the world.

I understood the gentleman to say he was subject to American military discipline in Japan.

I am on the Armed Services Committee of Congress, too, and I think we have the power to legislate regarding the American military wherever it is in the world, Mr. Nelson.

Mr. NELSON. I am of the opinion, Mr. Doyle, that by the mere fact that you are a civilian employee of the United States Government you do not lose your civil rights.

I still say that this committee does not have the jurisdiction to probe into my thoughts or my associations. And I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. Prior to your taking a position in Japan, did you prepare an application for government service in which you set forth your personal history and certain other matters?

Mr. NELSON. I would presume that I did because it is a general routine for federal employment.

Mr. TAVENNER. Let me hand you a photostatic copy of a so-called application for employment, and ask you to look at the last page and see whether or not the signature appearing at the bottom of it, on the reverse side of that sheet,
48 is yours.

Mr. MOULDER. What is that? The usual form? That has a number, doesn't it, Mr. Tavenner?

Mr. TAVENNER. The number is covered up, and I am unable to see it.

(Document handed to counsel for the witness.)

Mr. TAVENNER. It is equivalent to Form 57, but I don't believe it is exactly Form 57.

The sheet to which I referred the witness is the back sheet of the document on which his name appears.

Will you examine, please, the signature appearing at the bottom of the last page, and state whether or not it is your signature?

Mr. NELSON. Mr. Tavenner, my employment history has always been commented upon by my various employers.

Mr. TAVENNER. That is not responsive to my question, Mr. Nelson. The question simply was whether or not the

signature appearing at the end of the document is your signature.

Mr. NELSON. With respect to this question, Mr. Tavenner, I decline to answer on the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. MOULDER. Now may I suggest that, as I recall the question by counsel, you were first asked if you signed an application for employment. Isn't that correct?

Mr. TAVENNER. Yes, sir.

49 Mr. MOULDER. And the witness answered yes, he probably did.

Or you assumed that you had signed such application.

Therefore, it is my opinion that you probably have opened the door and waived your right to claim the protection of the First and Fifth Amendments.

The witness is directed to answer the question.

Mr. NELSON. Congressman Moulder, in response to the direction to answer the question, I respectfully decline to do so, based upon the privilege provided me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. MOULDER. Very well.

(The witness confers with his counsel.)

Mr. JACKSON. May I ask a question, Mr. Chairman?

Mr. MOULDER. Yes, Mr. Jackson.

Mr. JACKSON. Mr. Nelson, I note on this application also, on the last page, Question Number 26:

"Do you advocate or have you ever advocated or are you now or have you ever been a member of any organization that advocates the overthrow of the Government of the United States by force or violence?"

(The witness confers with his counsel.)

Mr. JACKSON. And in the column where an answer is required there is an X-mark under "No".

50 Was that statement a true statement at the time this application was executed?

Mr. NELSON. Mr. Jackson, the record will show that the witness has not identified this document. However, with respect

to the question, I will state that at no time have I advocated the overthrow of the government by force and violence.

Mr. JACKSON. Now the Supreme Court and the Congress have defined the Communist Party as an organization which does, in fact, advocate the overthrow of the government by force and violence.

Have you at any time been a member of the Communist Party?

Mr. NELSON. I say again that to toss such a word as Communist and Communist Party and force and violence, associated with the name of the witness, is not good.

And I say it is out of line, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. JACKSON. If it is out of line it was entirely out of line, it seems to me, for you to have signed this statement, or indicated on this statement—and I am taking it for granted that this is your application—for you to have indicated that you were never a member of any organization that advocated the overthrow of the government by force and violence, and now, at this time, decline to state whether you are a member of the Communist Party which has been officially designated by your government as an organization which does
51 precisely that.

Mr. NELSON. Is that a comment or a question, Mr. Chairman?

Mr. JACKSON. No. That was a comment.

Mr. MOULDER. Let's proceed, Mr. Tavenner.

Mr. TAVENNER. Mr. Scherer, will you give me the date, please, of that document?

Mr. SCHERER. August 12, 1947, by Nelson, Thomas Walfrid.

What is your middle name, sir?

Thomas Walfrid Nelson.

What is your middle name?

Mr. NELSON. My middle name is Walfrid, spelled W-a-l-f-r-i-d.

Mr. SCHERER. That is the way this is spelled.

Mr. TAVENNER. On the date indicated were you a member of the Communist Party?

Mr. NELSON. Mr. Tavenner, the question, as I say again, is an invasion of my rights under the First Amendment, in which a citizen is guaranteed freedom from inquiry with respect to his beliefs and associations, and I decline to answer that question on the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. JACKSON. You have no right to belong to the Communist Party. You are speaking in terms that imply that you have a constitutional right to belong to the Communist
52 Party which has been outlawed by the Government of the United States.

You certainly have no right to belong to what has been judicially described as an international conspiracy.

You have certain rights under the Bill of Rights, but you have no right to enter into a conspiracy any more than you have a right to peddle narcotics.

Mr. NELSON. Mr. Chairman——

Mr. JACKSON. Any more than you have a right to violate any federal statute.

This business of rights of individuals to do whatever they see fit under any circumstances is a little far-fetched.

Mr. NELSON. The record will not show any organizations to which I may have belonged or any narcotics I may have peddled.

Mr. JACKSON. I have no information on the narcotics.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. During the period 1945 to 1947 when you were serving the United Nations in Germany were you a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Tavenner, in the United Nations we Americans worked alongside of our allies in an attempt to rehabilitate the damage done by thought control and terroristic measures of the Hitler regime. And I do not, again, feel that you have any right to infringe upon my rights under the First Amendment, and I decline to answer the question on
53 the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. SCHERER. Do you consider the Hitler regime any worse or any better than the Communist regime?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Scherer, I have some rather positive opinions about the Hitler regime, based upon my observations there. I actually talked with some of the former concentration camp victims.

Mr. SCHERER. Have you heard about the concentration camps in Russia and Siberia, and persecution of the Jews by the Russians and Communists?

Mr. NELSON. I actually saw some of the bones of Buchenwald, and some of the victims who I am sure would agree with Supreme Court Justice Rutledge when he stated that these folks would certainly have appreciated the worthwhileness of a Fifth Amendment in their country when they were being harassed by their own government.

Mr. SCHERER. Now answer my question.

Would you consider the Hitler regime any worse or any better—that was my question—than the Communist-Stalin regime which now even the Communists condemn as murderous?

(The witness confers with his counsel.)

Mr. NELSON. In my opinion, Mr. Scherer, the reason why this committee brings out these terms of communism
54 and Nazism——

Mr. SCHERER. You brought up Nazism.

Mr. NELSON. Is to infer that the witness can be tied in with them. And I would not care to express any opinion on this matter.

Mr. SCHERER. Do you deny that while you were working for the United Nations and while you were an employee of the United States Government, in the allied military government in Germany, that you were a member of the Communist conspiracy at this very moment? Do you deny that?

Mr. NELSON. I think the record will show that question has already been put and answered.

Mr. SCHERER. Let's answer it again now.

Do you deny it?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Scherer, my record has been a dedication to upholding and defending the rights guaranteed under the American Constitution, both as a school teacher where I taught that the Bill of Rights is something that should be used every day and not merely honored on the 4th of July, and in my work as a social worker where we work on a democratic basis.

Mr. SCHERER. Is that the reason——

Mr. NELSON. Recognizing every individual as important, and his own dignity: he has the right to grow without government oppression.

55 I feel that my record will stand with anyone's.

Mr. SCHERER. Is that the reason MacArthur discharged you and sent you back from Japan as a security risk?

Mr. NELSON. That matter has already been handled in the record, has it not, Mr. Chairman?

Mr. SCHERER. Will you answer the question?

Mr. NELSON. I decline to answer this question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Weren't you sent back as a security risk by this government?

Mr. NELSON. I decline to answer the question on the basis of the First Amendment supplemented by the Fifth Amendment.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. Your first employment by the government was between 1941 and 1945, in the State of Washington, was it not?

Mr. NELSON. You are speaking of the Federal Government now?

Mr. TAVENNER. Yes.

Mr. NELSON. That is right.

Mr. TAVENNER. Were you a member of the Communist Party during that period of time in the State of Washington?

Mr. NELSON. Mr. Tavenner, you are approaching the same matter from a different angle, and I would continue to

56 decline to answer that question on the basis of the privilege permitted me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. TAVENNER. Were you a member of the Communist Party during the period you were teaching school from 1949 to '51, inclusive?

Mr. NELSON. Mr. Tavenner, I say that a school teacher should not be subjected by a congressional committee as to his political opinions.

In my viewpoint, a school teacher should be judged on the basis of his competence and his truthfulness in teaching his classes.

Mr. TAVENNER. I take it then that you are of the opinion that a person who is subject to the directives of the Communist Party should be permitted to teach in our public schools?

Mr. NELSON. Is that a question?

Mr. TAVENNER. Yes.

Mr. NELSON. Would you repeat it, please.

Mr. TAVENNER. Will you read the question.

Mr. MOULDER. You could rephrase it. Just ask him "Do you believe."

Mr. TAVENNER. I take it, from what you have stated, that you are of the opinion that a person who is subject to the directives of the Communist Party should be permitted to teach in our public schools. Is that your view?

57 Mr. NELSON. You are asking for my opinion. I shall give it to you.

In my opinion, a school teacher—just as any other employee—should not be responsible to his employer for his political opinions or his private thoughts.

A school teacher, especially, must be free to explore all knowledge and to expose his students to the facts so that the students themselves may form their opinions.

Mr. TAVENNER. Is a person subject to the directives of the Communist Party free to do those things?

Mr. NELSON. Mr. Tavenner, still going on my own opinion, I have seen in recent years statements where teachers have been discharged from their work after having been employed for sometimes 10, 15 and 20 years. I must believe that this

teacher must have been competent if he was held on his position through all this length of time.

So I cannot say whether these specific teachers were subject to anybody directing from outside. But I do say that these teachers who have been charged by this committee and similar committees as being under the subjugation of somebody else, I submit that the fact that they did teach for such a long time and had such very fine records must be an indication that they were competent to teach and were retained by their administration as good teachers until such time as such committees as these came around and tried to bring in
58 other factors rather than academic competence.

Mr. JACKSON. That is not necessarily true.

I know of some cases before this committee where teachers were released—not because of their competency or lack of competency but because they lied on official documents.

I think personally that a Communist teacher has got as much right in close contact with a young mind as a rattlesnake has in a baby's crib.

Mr. MOULDER. Let's proceed, Mr. Tavenner.

Mr. TAVENNER. Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State parole system for the State of California?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Tavenner, I was with the State only a brief time, but even in that short time I was commended by my superior as being one of the very promising officers.

However, with respect to this particular question, I decline to answer on the basis of the privilege provided to me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. TAVENNER. Are you a member of the Communist Party——

Mr. SCHERER. Pardon me just a minute.

Did you ever tell your superior who commended you that you were a member of the Communist Party?

Mr. NELSON. I decline to answer that question on
59 the basis of the First Amendment supplemented by the Fifth Amendment.

Mr. SCHERER. When you signed your application form for employment with the State and were asked the question whether you were a member of the Communist Party or not, did you disclose that on that application?

Mr. NELSON. Do you have the application here, Mr. Tavenner? I think Mr. Scherer would like to examine it.

Mr. JACKSON. Did you sign such an application, to the best of your knowledge?

Mr. NELSON. The State of California Personnel Department has application forms as other public agencies do, and I think it would be of value to the committee to let them examine it if it is here.

Mr. JACKSON. Let me phrase it this way:

If you were required today to sign such an affidavit would you do so, stating that you were not a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. The apparent intent of these remarks is to drive home the inference that this witness has done something that he should not have done.

Mr. JACKSON. It is an attempt to find out from you whether you are depending upon the Fifth Amendment in good faith.

That is the only intent. And to also attempt to find
60 out whether or not you were a member of the Communist Party.

Mr. NELSON. Mr. Jackson, I have taught the Constitution, and I have good faith in the Constitution and all of the amendments to it.

Mr. SCHERER. I started to ask a question.

Mrs. ROSENBERG. Pardon me, Mr. Chairman. Is there a question before this witness?

Mr. MOULDER. The last question was would you sign such an application today, or affidavit, that you were not a member of the Communist Party. I believe that is the question propounded by Mr. Jackson.

Mr. JACKSON. That is the question.

Mr. MOULDER. I believe his question was:

If you were signing an application for employment with the State of California, which provided or asked the question

whether or not you were a member of the Communist Party, would you sign such an affidavit.

I believe substantially that is the question.

Mr. JACKSON. That is substantially it. I want to know whether or not he would make a statement today on an official form which was a requisite of employment that he was not a member of the Communist Party.

(The witness confers with his counsel.)

Mr. NELSON. Mr. Jackson, you put the question, and the form is not before this committee, and is a matter of
61 conjecture. And I would decline to answer.

Mr. JACKSON. Is it a matter of conjecture?

Mr. NELSON. It is not a matter of past history.

Mr. JACKSON. Would you sign it?

If you are, as you say, a good loyal American citizen with nothing in your background of which to be ashamed, do you feel that you can't tell the committee of the Congress whether or not you would state affirmatively that you were not a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Jackson, I have been and I am now a good loyal American citizen.

Mr. JACKSON. Are you a member of the Communist Party?

Mr. NELSON. And I am not required to answer such questions as the one just now put to me by you, sir.

Mr. JACKSON. I shall put a similar one.

Are you a member of the Communist Party today?

Mr. NELSON. As I told Mr. Tavenner, this matter may be approached from various angles, but I still say that the Constitution is in effect, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. MOULDER. Any more questions, Mr. Tavenner?

Mr. TAVENNER. I have no further questions.

Mr. MOULDER. Mr. Doyle, have you a question?

Mr. DOYLE. Yes; I have just a couple.

62 I think I made a record of the witness' testimony of the agencies in government in which he worked, and manifestly he has had a very rich and varied experience and a very valuable experience.

Mr. NELSON. Thank you, sir. I agree with you.

Mr. SCHERER. I don't think the government has had, though.

Mr. DOYLE. And apparently he is very well informed on the history of nations and of government, including the history of the Communist Party. That is very evident.

I notice, Mr. Nelson, that you worked in the State of Washington in 1941 to 1945 for the Department of Agriculture in relief work. I am sure you know that in April of 1945 Earl Browder was kicked out of the American Communist Party.

Shortly thereafter certainly every thinking adult, American citizens, should have been charged with knowledge that the Communist Party program in the United States and in the world was conspiracy, subversively, and certainly for the last several years it has been a matter of knowledge to you as a school teacher and a student of government that the United States courts and Congress have declared the Communist Party in America to be an international conspiracy based upon the use, if necessary in their judgment, of force and violence.

(Representative Donald L. Jackson withdrew from the hearing room at this point.)

Mr. DOYLE. The reason I mentioned that is I know
63 that you know that history perhaps as well as I do or better. But I know that is a matter of history, and so do you.

The thing that amazes me, sir, very frankly—the thing that amazes me—is that, even recognizing your rights to plead the First and Fifth Amendment—which I certainly do, and all the committee does if it is done in good faith and honestly—the thing that amazes me is that you would come here this morning, and even this morning not be in a position where you could honestly say you are not today a member of the Communist Party.

That is the thing that amazes me.

I will make allowance for thinking, patriotic American citizens having joined the Communist Party back in '41, '42, '43, '44, '45, and, yes, some of them, '46 before it was known that the Communist Party was a conspiracy founded upon force and violence use if and when they chose to use it.

Mr. SCHERER. Before it was generally known.

Mr. DOYLE. Before it was generally known.

But you, sir, from your training, knew it ahead of most of us. From your reading and from your statement I can draw certain deductions based upon my own experience.

And so there came a time, in my book, when you as a school teacher and a patriotic American citizen should have withdrawn from the Communist Party.

By that I am inferring what I know as a matter of
64 practical experience, that there was a time when you were pretty close to it. You haven't admitted ever joining it, but I am assuming that you were a member of the Communist Party at one time for the purpose of this statement and this question.

I am not inferring it. I realize that under the law there is no inference to be drawn; there is no presumption to be drawn.

Mr. NELSON. Thank you, sir. I am glad you said that.

Mr. DOYLE. We know what the decisions of the courts are as well as you, sir.

Mr. SCHERER. That doesn't prevent us from relying on other sworn testimony, however, in arriving at a conclusion of this man's membership in the party.

Mr. DOYLE. No.

Mr. SCHERER. There is no question about it, Mr. Doyle. You don't have to have an inference.

Mr. DOYLE. The thing that amazes me, sir, is that you as a school teacher in the State of California, and a State official and former government official of the United States Government in foreign countries and in this country, have not put yourself in the position yet where you could come honestly to Congress—your Congress—about which you have been teaching school children—it might have been some of my children, which makes me shiver to think of it—that you haven't
65 yet put yourself in the position where you could frankly say to the United States Congress, "Yes, I was a member of the Communist Party—" if you were "—back in '42, '43, '44, '45 and '46 even, but I got my belly full and I got out."

That is the thing that amazes me, Mr. Nelson, that a man with your brilliancy isn't able to say this morning, to come and say, "No, I am not a member of the party."

You may think that is an invasion by us to make that inquiry.

Mr. NELSON. I do; yes.

Mr. DOYLE. I see you do. That is what amazes me. That is what amazes me, to be frank with you, because I used to be a member of the California State Board of Education, and I know some of the problems we had.

One more statement, Mr. Chairman. And may I make this observation——

Mr. NELSON. May I express my amazement also, Mr. Moulder?

Mr. MOULDER. It is unfortunate, but I hope we don't——

Mr. NELSON. I am really amazed at the activities of this committee.

Mr. MOULDER. I can understand the temptation on the part of the witness to reply to a lecture or——

Mrs. ROSENBERG. May I respectfully request——

Mr. MOULDER. Each member has a right to conduct himself as he pleases. I do the best I can to keep order and an orderly procedure.

66

Mrs. ROSENBERG. May I respectfully request that the witness be permitted to answer an argument that was put to him.

If you are calling——

Mr. DOYLE. I am not arguing to him, Madam Attorney. I am making a statement of my position.

Mrs. ROSENBERG. I wish this witness would have a like privilege.

I respectfully urge that you give him the privilege that your colleagues have been given all morning.

Mr. MOULDER. Mr. Doyle will proceed.

Mr. DOYLE. I just wish this witness would understand my position as a mere congressman.

I recognize your right and every American citizen's right to think what he pleases and to preach what he pleases and to write what he pleases and to live the way he pleases. But he has got to do it within the four corners of the Constitution of the United States, and every corner.

And I don't recognize your right, nor the right of any other American citizen to continue to be a member of any organization or any association that has been declared a conspiracy by the Congress of the United States, because that makes it illegal.

67 So I say to you, sir, as one American to another, I don't recognize your right to come to any group of United States Congressmen, lawfully on an investigation, and claim it is your right—if you want to claim it—to still be a member, if you ever have been, of a conspiracy that has been declared illegal by the Congress of the United States. And I hope you will get into a position where you don't disagree with me, at least on that one point.

Mr. NELSON. Mr.——

Mr. MOULDER. I must say, of course, that we will agree that you have the right to claim the privilege, as Mr. Doyle says, and we all agree that you have the right to claim the privilege and decline to answer anything under the provisions of the Constitution.

But I think his point was that he is criticizing your decision and judgment in so proceeding.

Mrs. ROSENBERG. Which he has no right to do, Mr. Chairman, may I say for the record.

And he has no right to draw inferences, which he has consistently drawn.

Mr. MOULDER. All right.

Now what do you have to say?

Mr. NELSON. I would certainly like to express my amazement also, Mr. Doyle.

Only a few days ago I was sitting in this room when

68 I heard the congressman speak of some of the eminent citizens of this community as rats and mice.

Mr. DOYLE. No; I didn't. I deny it. You heard nothing of the kind.

Mr. NELSON. I heard it.

And I must say that if Mr. Doyle fancies himself as a political pied piper who is going to take the mice out of the city of Hamlin, constitutional liberties, he had better take a second look.

I do not accept the inferences that have been made that because a citizen, in his own protection, from having observed how this committee operates, answers the questions on the basis of the First Amendment and the Fifth Amendment, that any inference unfair to him should be drawn.

The Supreme Court has spoken on that, and I think that should be enough to silence this sort of activity.

And I hope that my opportunity of being here today can help to hasten the day when this committee will no longer be in existence.

Mr. MOULDER. If the officer can identify any person responsible for that demonstration, they will be, please, removed from the hearing room.

Mr. DOYLE. This gentleman right here with the glasses with the two ladies on either side of him, joined in it.

This man right here, looking at me.

69 Mrs. ROSENBERG. Is there a question before the witness, Mr. Chairman? Is there a question before the witness?

Mr. MOULDER. There is no question pending.

(Representative Donald L. Jackson returned to the hearing room at this point.)

Mr. MOULDER. Mr. Jackson?

Mr. JACKSON. No questions.

Mr. MOULDER. Mr. Scherer, do you have any additional questions?

Mr. SCHERER. No.

Mrs. ROSENBERG. Is the witness excused?

Mr. MOULDER. Mr. Tavenner?

Mr. TAVENNER. I have no further questions.

Mr. MOULDER. The witness is excused.

You may claim your witness fees with the clerk, who is sitting at the desk immediately behind you.

* * * * * *

EMPLOYEE'S EXHIBIT "A"

COUNTY OF LOS ANGELES

PERSONNEL DIVISION
ROOM 20004 ADMIN UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

DEPARTMENT OF CHARITIES

EMPLOYMENT AUTHORIZATION

March 4, 1949

EMPLOYEE NO. 46440

NAME: HELSOE, Thomas W.

DEPT. NO. 21-6 (2-18)

ADDRESS: 420 S. Westlake L.A., FE 4144

DIVISION: Metro South

ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD. SALARY	NET SALARY
7770A-1	Soc. Case Wkr.,Temp.(HELSOE) (Sub Margaret A. Colbert, Soc. 281(1)	24	211.	211.

WITHHOLDING TAX CODE: 49-S

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS AUTHORITY:

Pemt. Reg. Exam.
Case/191 216/2084 (m/ge)
Dem Reg. Soc. Wkr.

RETIREMENT PERCENTAGE:

EFFECTIVE DATE: March 2, 1949

CC—SERVICE REPORT
- FILE
- DIVISION HEAD
- EMPLOYEE
- BPA-1
- BPA-2

LACOH 224 5CM 9-48

SECURE CLOCK CARD FROM PAYROLL DIVISION BEFORE REPORTING FOR DUTY. PRESENT CLOCK CARD WITH COPY OF THIS AUTHORIZATION TO YOUR SUPERVISOR WHEN YOU REPORT FOR DUTY. EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH, UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

10 Alex. Dibert

PERSONNEL MANAGER, CHARITIES

1/67

COUNTY OF LOS ANGELES — DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
DOCK SHEET

☑ New ☐ Change ☐ Return to Duty ☐ Triple entry (Reinstate-Reentry) ☐ Correction

Employee name: Nelson, Thomas W. Date: 3-3-

Employee number: _____ Division code: 21-3 Pay no.: 2-14

Address: 490 S. Westlake, L.A. Phone: DU 4144

Classification Title: Soc. Case Wrkr. (Asst. Director) Next Step Advance: _____ Month Day

Clock Location: _____ Item: 7770A Shift: 1

Schedule No.: 24 Type: _____ Bas. Salary: 211. Net Salary: 211. Maint. Code: _____ ☐ Int. ☐ Ext.

Tax Class: 49-3 Retirements: _____ Effective Date: 3-2-67 Month Day Year

Certif. No.: _____ Elig. No.: _____ Req. No.: _____ (Trans # 88)

Status Code: 3 Access'n Code: C Previous County Service: _____ Yrs. _____ Mos.

Date entered County Service: _____ Month Day Year

Remarks: New Reg. Soc Wrkr. 6 mos 2-11

FOR PERSONNEL USE ONLY

Item noted	7770A
Index noted	7770A
Loyalty form	Filed
Vacc. form	
Retire. card	
Regis. card	
30 day note	
Leave of abs.	
Reinst. letter	
Trans. letter	
Cancel M/L	
Vet. trainee	
O/T letter	
Release	
	Filed
Return to	1-3-67

Carol Dilley
Personnel Manager - Charities

Page number: 10 By: _____

FOR PAYROLL USE ONLY

Hours paid		Short time (6 hours)	
Holiday hours		Vac. hours	
O.T. hours		C.O.S.L. hours	
75% S.L. hours		100% S.L. hours	
50% S.L. hours			

By: _____

P-4068 Larson 10-66 Rev. 66

County of Los Angeles — Bureau of Public Assistance

EMPLOYEE'S FACE SHEET

Date March 2 1949

NAME NELSON, THOMAS W. (Last) (First) (Middle) (Maiden Name if Woman)

ADDRESS 420 S. WESTLAKE, LOS ANGELES (Number) (Street) (City) Telephone FE 4144

Married [X] Single [ ] Divorced [ ] Widowed [ ] Separated [ ]

Male [X] Female [ ] Race WHITE

Citizen of U.S. YES (Yes or No) Yrs. in U.S. 36 Yrs. Res. in Calif. 2 yrs. Yrs. Res. in L.A. Co. 2 yrs.

GRACE M. NELSON (Name of Employee's Spouse) 420 S. WESTLAKE LOS ANGELES (Address)

DECEASED (Name of Employee's Father) (Address)

ANNIE B. NELSON (Name of Employee's Mother) 303 FOOTE ST., OLYMPIA, WASH. (Address)

EDUCATION

Common School 1-2-3-4-5-6-7-8 Graduate YES (Yes or No) Name of School WASHINGTON Age at leaving 13
(Circle last grade completed)

High School 1-2-3-4 Graduate YES (Yes or No) Name of School OLYMPIA Age at leaving 17

Course Taken COMMERCIAL

Remarks:

College or University COLLEGE 1-2-3-4 Graduate YES (Yes or No) Name of School WESTERN WASHINGTON COLLEGE OF EDUCATION Degree B.A.

Major Subject EDUCATION Minor Subject SOCIAL SCIENCE

Remarks:

Graduate Work YES No. of Units 45 Name of School UNIVERSITY OF WASHINGTON Degree M.A.

Courses Taken SOCIAL CASE WORK
PUBLIC WELFARE ADMINISTRATION
MEDICAL INFORMATION FOR SOCIAL WORKERS

Remarks:

Business or Correspondence Courses NONE

Remarks:

Now Studying (Courses) NONE Name of School

Remarks:

For what profession or occupation are you qualified, by reason of education, training, or experience? SOCIAL CASE WORK, ELEMENTARY SCHOOL TEACHER, PUBLIC WELFARE ADMINISTRATION

Do you own a car? NO Do you drive? YES

If necessary would you be willing to drive your car in County Service?

PA 38 Rev. 12-48 (Over)

PHYSICAL DATA

Date of Birth FEB. 24, 1913 Place of Birth LITTLE ROCK, WASH.

Height 5' 11" Weight 165 Color of Hair BLONDE Color of Eyes BLUE.

Disabilities NONE

EMPLOYMENT HISTORY

(For last ten years—in chronological order, beginning with last or most recent employer)

Former Employer	Position Held	Period of Employment From	To	Salary	Reason For Leaving
U.S. DEPT. OF ARMY	WELFARE OFFICER	SEPT. 1947	DEC. 1949	$357 $388	OVERSEAS DUTY INVOLUNTARILY ASSIGNED
UNITED NATIONS RELIEF AND REHABILITATION ADM.	RECREATION DIRECTOR	JAN. 1946	JUNE 1947	$300	AGENCY ABOLISHED
WAR FOOD ADM.	ADMINISTRATIVE ASSISTANT	JULY 1945	JAN. 1946	$240	TO JOIN UNRRA
OFFICE OF LABOR	ADMINISTRATIVE ASSISTANT	1943	1945	$300	MORALE FUNCTIONS TRANSFERRED TO
U.S. DEPT. OF AGR.	FIELD MAN	JUNE	JULY	16.00	
FARM SECURITY ADM.	SUPERVISOR	1941	1943	$300	TO ATTEND
THURSTON COUNTY	CLERK	SEPT.	SEPT.		
WELFARE DEPT.	WORKER	1937	1940	1940	GRADUATE SCHOOL

What foreign languages do you speak? NONE

Are you a Registered Social Worker? NO

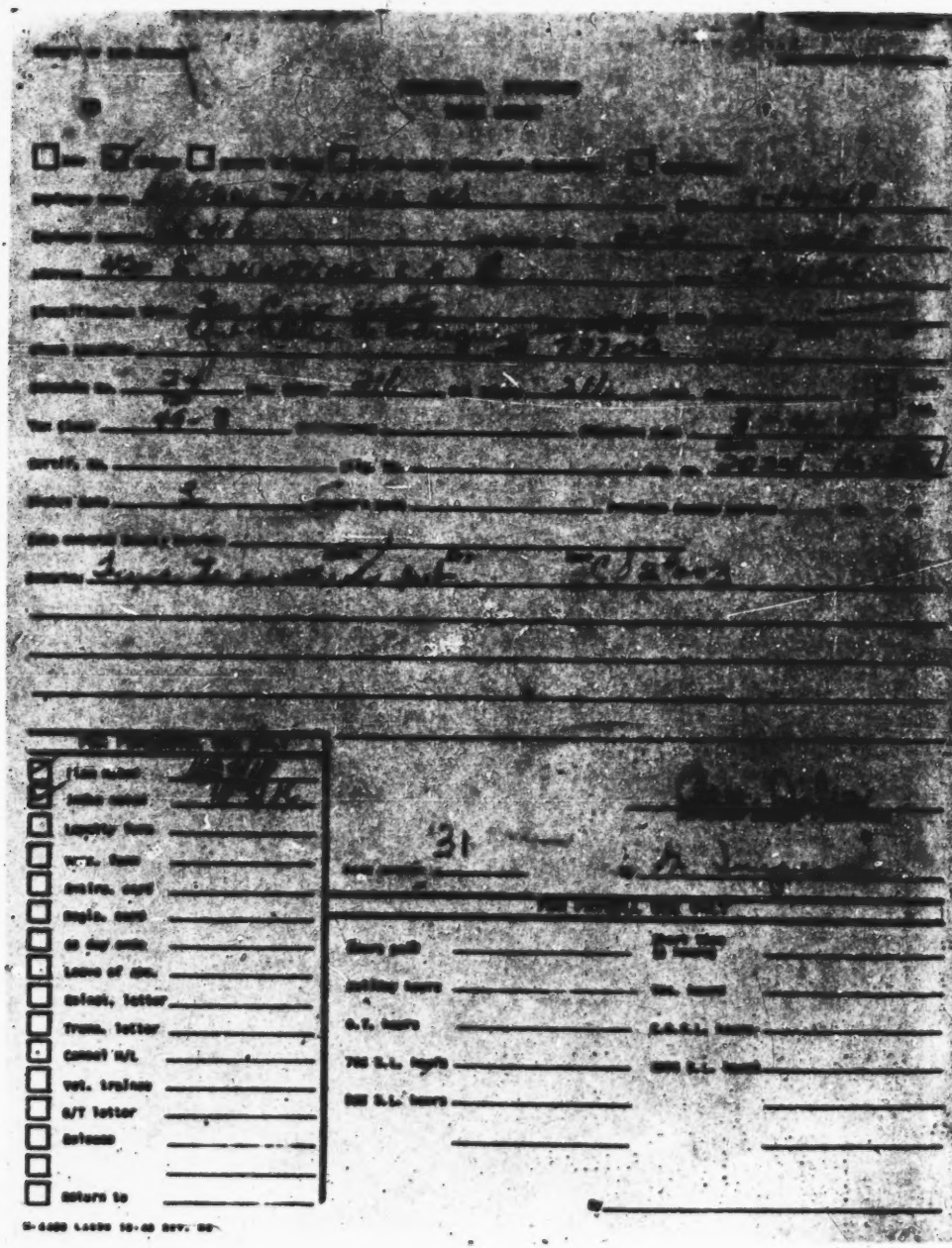
Registration Number _____

Have you ever been arrested? NO If so, explain fully

(Exclude minor traffic violations)

Usual Signature of Applicant Horace W. Nelson

[74]



COUNTY OF LOS ANGELES

PERSONNEL DIVISION
ROOM 20004 ADMIN UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

DEPARTMENT OF CHARITIES

CHANGE NOTICE

March 15, 1949

EMPLOYEE NO. 66410

DEPT. NO. 21-S (9-18)

NAME: [redacted], Thomas W.

DIVISION: Metro South

ADDRESS: 422 S. Westlake L.A., FE 4144

	ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD. SALARY	NET SALARY
FROM:	77703A-1	Soc. Case Wkr., Temp.([redacted]) (Sub Margaret A. Colbert, Sec. 251(1)	24	211.	211.
TO:	77703A-1	Soc. Case Wkr., Temp.([redacted]) (Sub Cecilia de Rodriguez, Sec. 251(1)	24	211.	211.

WITHHOLDING TAX CODE: 49-S

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AMOUNT OTHER DEDUCTIBLE ITEMS

RETIREMENT PERCENTAGE:

AUTHORITY: Transfer to another sub cas/ses Sig/Acct (m/06)

EFFECTIVE DATE: March 4, 1949

CO-SERVICE RECORD
- FILE
- DIVISION HEAD
- EMPLOYEE
- SPA-5
- SPA-6

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

BY [signature] PERSONNEL MANAGER, CHARITIES

LABOR DISTRIBUTION 0-20

County of Los Angeles — Department of Charities

PERSONNEL DIVISION
WORK SHEET

☐ New ☑ Change ☐ Return to Duty ☐ Triple entry (Permanent-Temporary) ☐ Correction

Employee name Mulvey, Thomas W. Date 3-31

Employee number 66410 Division Code 24-3 Sub. 2-16

Address 420 S Westlake, L.A. Phone FE 4144

Classification Title Eg Case Wkr.
Cal-Casilia de Rodriguez

Clock Location Item 07702a Step 1

Schedule No. 34 Grd. Salary 211 Net Salary 211. Maint. Code ☐ Ind. ☐ Dep.

Tax Class 49-3 Deductions — Effective Date 3-16-49

Certif. No. 4498 Elig. No. 11 Req. No.

Status Code 2 Account's Code Previous County Service..... Yes — No

Date entered County Service

Remarks: Rem Reg Sec Work.

FOR PERSONNEL USE ONLY

- ☑ Item noted 4B 3-31
- ☑ Index noted 4B 4-1
- ☐ Loyalty form
- ☐ Voac. form
- ☐ Retire. card
- ☐ Regis. card
- ☐ 60 day ends
- ☐ Leave of abs.
- ☐ Reinst. letter
- ☐ Trans. letter
- ☐ Cancel M/L
- ☐ Vet. trainee
- ☐ O/T letter
- ☐ Release
- ☐
- ☐ Return to

Chas. Dilley
Personnel Analyst - Charities

Form spoiled not By M Livingstone

FOR PAYROLL USE ONLY

Hours paid — Short time (8 hours)

Holiday hours — Vac. hours

O.T. hours — C.O.S.L. hours

7th S.L. hours — 30th S.L. hours

30th S.L. hours

By

[redacted]

[redacted]

[redacted]

County of Los Angeles

Department of Charities

PERSONNEL DIVISION
Room 2020-A
Los Angeles County General Hospital

RESIGNATION

Date May 18, 1949

I hereby resign from my position as Social Case Worker in the Department of Charities, Bureau of Public Assistance, (Bureau or Institution) the effective date to be computed on the basis of my last working day 5-18-49 (Date). My reason for resigning is as follows: Personal convenience

Noted: J. Hubert
Division Head or District Director

Thomas N. Nelson
Signature

Forwarding Address

Personnel Office Use Only
Last day worked 5/18?
Regular vacation //
Leaving vacation
Days off
Holidays
Overtime

Cleared for Credit 5/25 mf

H-4329 LACOH 4-49 mm

52 NELSON AND GLOBE VS. COUNTY OF L. ANGELES, ET AL.

COUNTY OF LOS ANGELES

PERSONNEL DIVISION
ROOM 8008A ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

DEPARTMENT OF CHARITIES

TERMINATION OF EMPLOYMENT May 28, 1949

NAME: NELSON, Thomas W. EMPLOYEE No. 66410 DEPT. NO. 21-3 (2-18)

ADDRESS: 420 S. Westlake L.A., FE 4144 DIVISION: Metro South

ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD. SALARY	NET SALARY
7773A-1	Soc. Case Worker, Temp. (Sub-Cecilia de Rodrigues, Soc.351(1)	24	211.	211.

WITHHOLDING TAX CODE: 49-3

REASON: Resigned - Personal reasons

RETIREMENT PERCENTAGE:

Item noted 5/26/49
Index noted 5/26/49
TCC & Cl. to Payroll 5/25
Form 25 to CSC

EFFECTIVE DATE: May 18, 1949
Last day worked 5-18

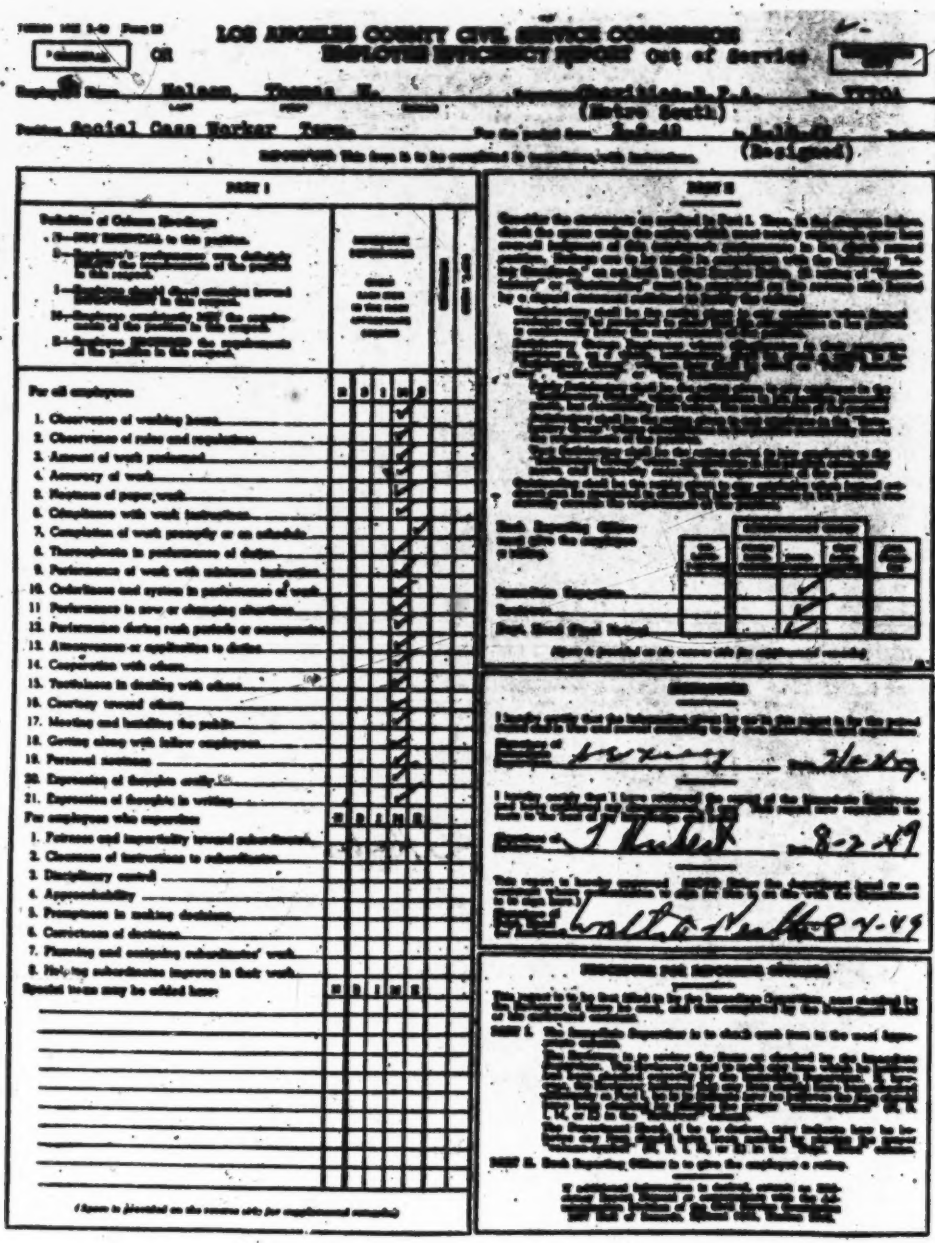
CC-PAYROLL
" SERVICE RATING
" FILE
" DIVISION HEAD
" EMPLOYEE
" KEY CUSTODIAN

Acct. & Claims - Mr. DeLang
B.P.A. 63

Personnel Manager, Charities

NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL. 53

80



LOS ANGELES COUNTY CIVIL SERVICE COMMISSION
EMPLOYEE EFFICIENCY REPORT Out of Service

Employee Name: Nelson, Thomas H. Appointed: Caretaker, D.P.A. Dept. 77701
(Metro South)
Position: Social Case Worker Term. Per the period from: 2-2-48 to 8-1-49 Indefinite
(Resigned)

REPORTER: This form is to be completed in accordance with instructions.

PART I

Definition of Column Headings
E—VERY EFFICIENT in the position.
S—Employee's performance was definitely SATISFACTORY in the requirements of the position in this respect.
I—Employee should show definite INCREASED EFFICIENCY in this respect.
U—Employee consistently FAILS the requirements of the position in this respect.
N—Employee DOES NOT HAVE the requirements of the position in this respect.

	E	S	I	U	N
For all employees					
1. Observance of working hours					
2. Observance of rules and regulations					
3. Amount of work performed					
4. Accuracy of work					
5. Neatness of paper work					
6. Obedience with work instructions					
7. Completion of work promptly or on schedule					
8. Thoroughness in performance of duties					
9. Performance of work with minimum instruction					
10. Orderliness and system in performance of work					
11. Performance in new or changing situations					
12. Performance during rush periods or emergencies					
13. Attentiveness or application to duties					
14. Cooperation with others					
15. Truthfulness in dealing with others					
16. Courtesy toward others					
17. Meeting and handling the public					
18. Getting along with fellow employees					
19. Personal neatness					
20. Expression of thoughts orally					
21. Expression of thoughts in writing					
For employees who supervise	E	S	I	U	N
1. Fairness and impartiality toward subordinates					
2. Clearness of instructions to subordinates					
3. Disciplinary control					
4. Approachability					
5. Promptness in making decisions					
6. Correctness of decisions					
7. Planning and assigning subordinates' work					
8. Helping subordinates improve in their work					
Special items may be added here:					

(Space is provided on the reverse side for supplemental remarks)

PART II

Consider the statements as marked in Part I. Then, in the categories below, check the space under the rating which most nearly describes your overall judgment of this employee's performance in the specific overall position. Always ask yourself, in connection with the following: "Is my Supervising, or any Rank in Office Rating, in excess of 'Specific Duties' or 'Responsibility' must be considered in the answers also limited by a factor commonly known as 'Time in Grade'?"

	Unsatisfactory	Improvement Necessary	Competent	Very Good	Outstanding
Work Regarding Others					
Supervision Exercised					
Resources					
Work Under Direct Control					

(Space is provided on the reverse side for supplemental remarks)

SIGNATURES

I hereby certify that the information given by me in this report is to the personal knowledge of the undersigned, and that I have discussed the contents of this report with the employee.

Reporter's Signature: [illegible] Date: 7-6-49

I hereby certify that I have reviewed the report of the Employee Reporter and the rating of the employee as given in this report, and have discussed the contents of this report with the employee.

Reviewer's Signature: [illegible] Date: 8-2-49

This report is hereby approved. (Check Below for Appointing Head or as otherwise directed.)

Signature of Appointing Head: [illegible] Date: 8-4-49

INSTRUCTIONS FOR REPORTING OFFICIALS

This report is to be filled in by the Employee Reporter most familiar with the employee's work, and then completed by the Appointing Head or his authorized agent.

PART I. The Employee Reporter is to check each item in the most appropriate column.

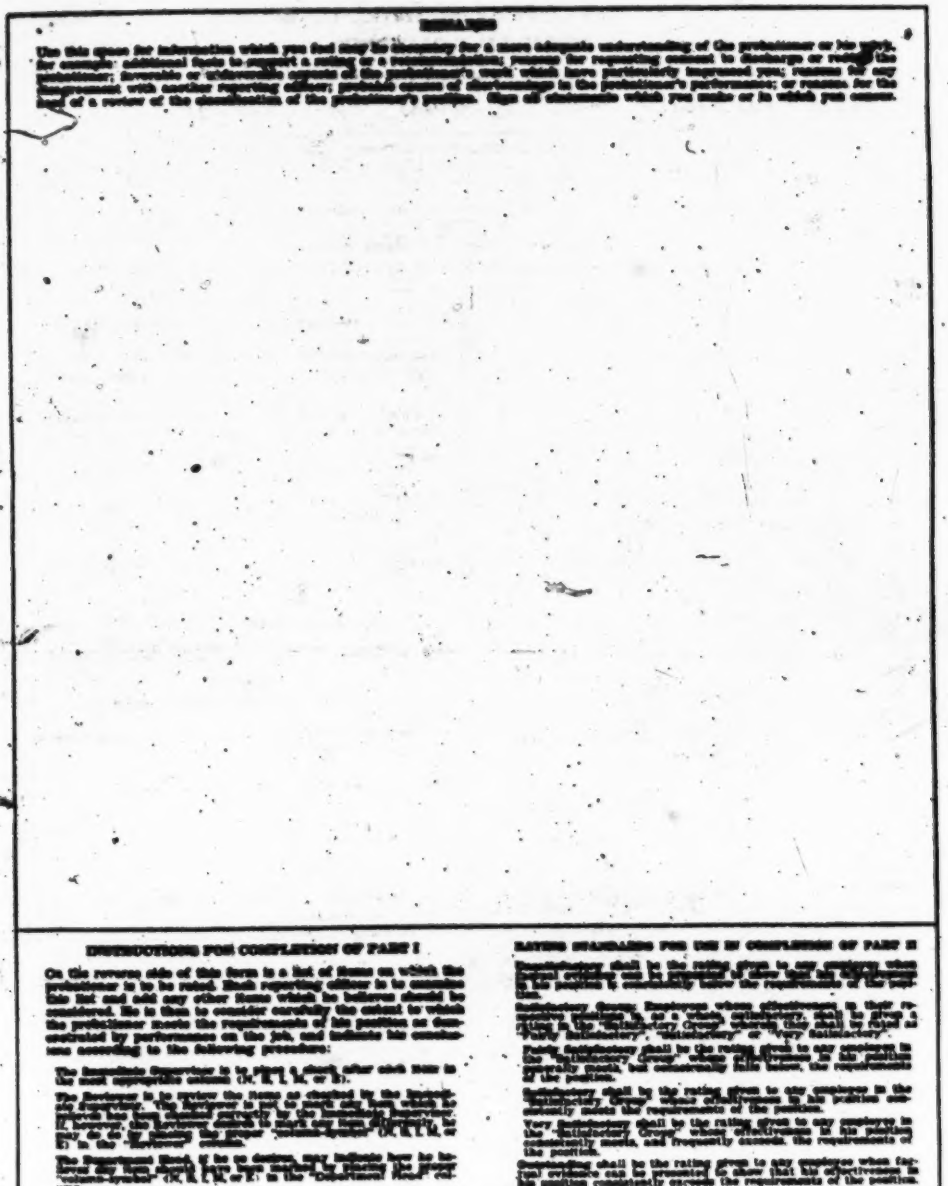
The Reporter, in all cases, the items as checked by the Employee Reporter, and shall consider in his judgment whether the employee's performance is satisfactory in the respects indicated, or whether he should show definite increased efficiency in these respects, or whether he consistently fails the requirements of the position in these respects, or whether he does not have the requirements of the position in these respects. (See Definitions of Column Headings.)

The Appointing Head, if he so desires, may indicate here in the space provided his agreement or disagreement with the ratings given in Part I, or he may do so in the space provided for supplemental remarks.

PART II. Each Reporting Officer is to give the employee a rating.

If additional information is desired, attach to this form and identify as Exhibit A, Exhibit B, etc.

81



REMARKS

Use this space for information which you feel may be necessary for a more adequate understanding of the probationer or his work, for example: additional facts to support a rating or a recommendation; reasons for requesting consent to discharge or resign the probationer; favorable or unfavorable aspects of the probationer's work which have particularly impressed you; reasons for any disagreement with another reporting officer; probable extent of shortcomings in the probationer's performance; or reasons for the need of a review of the classification of the probationer's position. Sign all statements which you make or in which you concur.

INSTRUCTIONS FOR COMPLETION OF PART I

On the reverse side of this form is a list of items on which the probationer is to be rated. Each reporting officer is to consider this list and add any other items which he believes should be considered. His is then to consider carefully the extent to which the probationer meets the requirements of his position as determined by performance on the job, and indicate his conclusions according to the following procedure:

The Immediate Supervisor is to check, in Part I, which other rank most appropriately extends (a), (b), (c), or (d).

The Reviewer is to review the items as checked by the Immediate Supervisor. The Reviewer is not to change any item checked by the Immediate Supervisor, but may supplement it by the checking of additional items. However, the Reviewer should be alert to check any item checked (a), (b), (c), or (d) by the Immediate Supervisor which extends another rank, (a), (b), (c), or (d), as the case may be.

The Department Head, if he so desires, may indicate here he believes they have checked any item which extends another rank, (a), (b), (c), or (d), as the case may be.

RATING STANDARDS FOR USE IN COMPLETION OF PART II

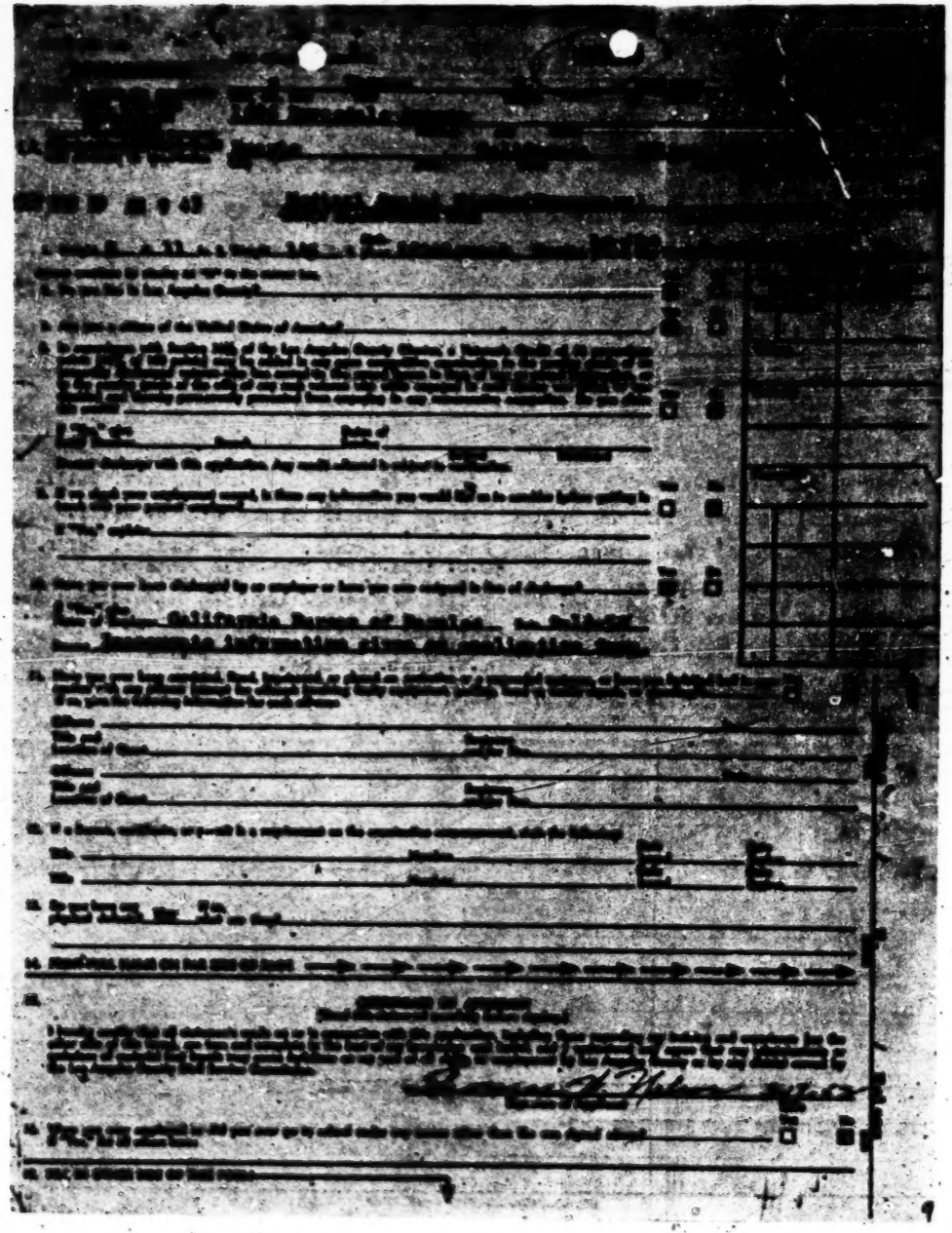
Unsatisfactory. Shall be the rating given to any employee when [illegible] in the opinion of the rater fail to meet the requirements of the position.

Satisfactory. Shall be the rating given to any employee in the position who consistently meets the requirements of the position.

Very Satisfactory. Shall be the rating given to any employee in the position who [illegible] consistently meets, and frequently exceeds the requirements of the position.

Outstanding. Shall be the rating given to any employee when [illegible] in the opinion of the rater that his performance in the position consistently exceeds the requirements of the position.

[82]



[illegible]

Dates	Type of Work	Employer's Name	Address
[illegible]	Parole Officer	California Bureau of Paroles	Los Angeles, Calif.
[illegible]	Teacher	Monrovia-Duarte Union High School	Monrovia, Calif.
[illegible]	Social case worker	L.A. Co. Bureau of Public Assistance	Los Angeles, Calif.
[illegible]	Welfare Officer	U.S. Department of the Army	The Pentagon, Washington, D.C.
[illegible]	Welfare Officer	United Nations Relief and Rehabilitation Adm.	1344 Connecticut Ave. Washington, D.C.
[illegible]	Ass. Administrative Asst.	War Food Administration Office of Labor	Portland, Ore.
[illegible]	Regional Grant Supervisor	U.S. Dept. of Agri. Farm Security Adm.	Portland, Ore.

[illegible]

Job Title	Salary	Average Hours Per Week	Date Began	Date Left	Total Time Years Months	For Office Use
	month					

What work did you do? — Type of Employer's Business — City Where You Worked

Job Title	Salary	Average Hours Per Week	Date Began	Date Left	Total Time Years Months	For Office Use
	month					

What work did you do? — Type of Employer's Business — City Where You Worked

Job Title	Salary	Average Hours Per Week	Date Began	Date Left	Total Time Years Months	For Office Use
	month					

What work did you do? — Type of Employer's Business — City Where You Worked

Job Title	Salary	Average Hours Per Week	Date Began	Date Left	Total Time Years Months	For Office Use
	month					

What work did you do? — Type of Employer's Business — City Where You Worked

USE ADDITIONAL SHEETS IF NECESSARY

84

COUNTY OF LOS ANGELES

PERSONNEL DIVISION
ROOM 6606A ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

April 1, 1952

DEPARTMENT OF CHARITIES

EMPLOYMENT AUTHORIZATION

NAME: NELSON, Thomas W. EMPLOYEE No 66407 DEPT. No. 21-8 (44)

ADDRESS: 1606 Bryesdale Ave., Duarte Elliott 89190 DIVISION: Med. Soc. Serv.

ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD. SALARY	NET SALARY
5173A-1	Medical Social Worker,Temp.([redacted])	30	288.	288.

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

WITHHOLDING TAX CODE: 52-4

AUTHORITY: 318 #2332
Former employee B.P.A. May 1949
Pend. Unassembled Exam.

RETIREMENT PERCENTAGE:

EFFECTIVE DATE: April 1, 1952

CC—BPA-1
" FILE
" SERVICE REPORT
" BPA-2
" DIVISION HEAD
" EMPLOYEE

LACGH 384 50M 3-51

SECURE CLOCK CARD FROM PAYROLL DIVISION BEFORE REPORTING FOR DUTY. PRESENT CLOCK CARD WITH COPY OF THIS AUTHORIZATION TO YOUR SUPERVISOR WHEN YOU REPORT FOR DUTY. EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

1

Ann. Dibert

PERSONNEL TRAINING SUPERVISOR

87]

County of Los Angeles — PERSONNEL DIVISION — Department of Charities

WORK SHEET

Date 4-1-52

☑ New ☐ Change ☐ Return to Duty ☐ Triple Entry (Pers-Trip) ☐ Cancellation of Notice, Dated ☐ Correction of Notice, Dated

Employee Name 1-16: NELSON, Thomas W.

Address: 1606 Briggs Lake Way, Duarte

Effect. Date 24-29: 4 1 52 — Seniority Chg. Date 30 Check: ☐ — Period Retired 3 in 31 Check: ☐ — Reversed Step 3 in 31 Check: ☐

Cont. Ser. Date Chg. Only 1 in 33 Check: ☐ — Next Step Adv. Date 44-45: 4 52 — Clock Loc. 46-59 — Rev. Code 61: ADD

Position		Position: Mechanical Janitor Helper	
Budgeted Sub.	Assigned Sub.	Budgeted Sub. 47-51: 44	Assigned Sub. 52-56: 44
Item	Step	Item 54-58: 4	Step 59: 1
Ord. Salary	Net Salary	Ord. Salary 60-63: 223	Net Salary: 223
Reas. Code	Tax Code / Statute Code	Reas. Code 69: —	Tax Code 70-71: F

Access'n. Code 76: C — Previous County Service: Yes — No — Continuous Service Date 72-75: 3 52

Retirement % — Certif. No. — Elig. No. — Emp. No.

☐ Approved for Hosls ☐ Name Change Only — ☐ U.S.C. & F.S. ☐ Temp. - Perm. Reinst. Prob. App. of CSC — ☑ Perm. Appoint. - Reinstate. Trans. ☐ Return to Duty From — ☐ Clock Loc. Chg. ☐

Remarks: Former employee - B.P.A. - May 49

FOR PAYROLL USE ONLY

- ☐ Form Notice
- ☐ Notice Mailed
- ☑ Loyalty Form
- ☐ Voc. Form
- ☐ Retire. Card
- ☐ Regis. Card
- ☐ 40 Day Ends
- ☐ Leave of Abs.
- ☐ Reinst. Letter
- ☐ Trans. Letter
- ☐ Cancel W/L
- ☐ Vet. Trainee
- ☐ O/T Letter
- ☐ Release
- ☐ T.P.
- ☑ Notify S-15 Sect

Personnel Analyst - Charities

Page No. 1 — By

FOR PAYROLL USE ONLY

Acc Hrs. for 1000 SL 9-13	Sub Assigned 52-53	CSRL Hrs. 68-70
Acc. Hrs. for Vac 14-16	Item 54-58	700 SL Hrs. 71-73
Employee Number 19-23	Step 59	1000 SL Hrs. 74-76
Date 24-27	Code 3 in col 60	500 SL Hrs. 77-80
Month SL App 49-50	Vac. Hrs. 61-63	
Div. 51	Overtime Hrs. 64-67	

By

County of Los Angeles

Department of Charities

PERSONNEL DIVISION

REQUEST TO DEPUTIZE EMPLOYEE

Harold J. Ostly, County Clerk
Room 700 - Hall of Records
Los Angeles, California

Attention: Frances Peterson

Los Angeles, California
Date 6-1-51

Dear Mr. Ostly:

Will you kindly deputize the bearer, Thomas W. Nelson to permit taking affidavits in connection with duties as an employee in this department.

Very truly yours,

ARTHUR J. WILL
Superintendent of Charities

By _____
A. W. SILVER
Personnel Manager - Charities

Thomas W. Nelson
Signature for Identification

B-4298 LACSH 8/51 bb

County of Los Angeles — PERSONNEL DIVISION — Department of Charities

EMPLOYEE INFORMATION SHEET

DATE 4-1-52

4. NAME THOMAS N. NELSON
5. Residence Address 1606 BEVERLY AVE, DUARTE — Residence Phone ELLIOTT 8-9190
6. Height 6' 11" — Weight 195 — Color Eyes BLUE — Color Hair BLONDE — Race WHITE
7. Date of Birth 8-24-18 — Birth Place LITTLEROCK, WASH
Years Residence in California 9 — Years Residence in L.A. County 3
8. Are you a citizen of the U.S. X Yes — If a Citizen by Naturalization your Certificate must be presented for verification.
9. Certificate No. — Date of Certificate — Where Issued
10. Name and Address of Relative or Friend to be notified in case of accident:
Name GRACE N. NELSON — Relationship WIFE
Address 1606 BEVERLY AVE, DUARTE Phone No. ELLIOTT 8-9190
11. If married woman, Husband's full name
Social Security No. — If a Veteran, Cal. Reg. No.

CHECK (X) WHICH APPLIES TO YOU
Married X
Single
Divorced
Widowed
Separated
MALE X
FEMALE

12. Have you worked at this hospital before? NO — If so, when From To — Under what name
13. Have you previously been employed by the County of Los Angeles? YES — If so, when MARCH TO MAY, 1949 — Department B P A
14. Organizations (Membership) CALIFORNIA TEACHER'S ASSN.
Army — Navy — Marine Corps — Coast Guard — Phase — War (Circle) — Name of War
If U. S. Veteran, Circle Branch of Armed Service

15. EDUCATION: Circle last grade completed in Grammar or High School 1 2 3 4 5 6 7 8 9 10 11 (12)

College or University attended	Major	Years completed	Degree
MICHIGAN STATE NORMAL COLLEGE OF EDUCATION, YPSILANTI, MICH.		1 2 3 (4) 5 6	B.A.
Other Schooling, Correspondence, Extension, Business or Trade Schools	GRADUATE SCHOOL OF SOCIAL WORK, UNIVERSITY OF WASHINGTON, SEATTLE, WASH.		

16. EMPLOYMENT HISTORY: Begin with PRESENT or LAST employer. Account for your TEN years.

From Mo. - Yr.	To Mo. - Yr.	Position or Occupation	Salary	Name and Address of Employer	• Reason for leaving
10-1951	2-1952	PROBATION OFFICER	$325.00	CALIFORNIA BUREAU OF PAROLES 815 S. BROADWAY, LOS ANGELES	DISMISSED
9-1948	12-1951	TEACHER	$.60 HR.	WONDERVIEW-JUNIOR HIGH SCHOOL MONTEREBELLO, CALIF.	RESIGNED
9-1949	5-1949	SOCIAL CASE WORKER	$11.40	LOS ANGELES COUNTY BUREAU OF PUBLIC ASSISTANCE, LOS ANGELES	RESIGNED
9-1947	2-1948	OFFICER	$3,240	U.S. DEPT. OF ARMY WASHINGTON, D.C.	DISMISSED
1-1945	6-1947	PERSONNEL OFFICER	$180	WAR DEPARTMENT, WASHINGTON, D.C.	RESIGNED
9-1943	1-1945	AIR NAVIGATION TRAINING OFFICER	$300	U.S. ARMY AIR FORCES, OFFICE OF ARMY AIR FORCES	RESIGNED

• Have you been discharged or compelled to quit a position? YES
If so, explain below.
CALIFORNIA BUREAU OF PAROLES, FEB. 1952
U.S. DEPT. OF ARMY, FEB. 1948

The above information set forth by me is a true statement to the best of my knowledge.

Signed Thomas N. Nelson (Applicant)

Received by (Employee, Personnel Interest)

Date ____, 19__

LACOE 940 102, 940 Rev.

[90]

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION
REFERENCE REPORT
FOR

Senior Social Case Worker

TO: Mr. A. W. Silver
1200 North State Street
Los Angeles, California

Date April 21, 1952

COMMENDS Thomas V. Nelson
RA - 3/1919 - 5/1948

Our records indicate that you can give us information concerning the competence of this candidate for the above position.

By check marks in the appropriate places, please answer the following questions, using as the basis for your answers, observation, knowledge, available records or conference with persons who supervised the candidate.

Is the candidate's appearance acceptable for this type of work? Yes / No / Doubtful

Do you know of any physical limitation which would affect the candidate's performance on this job? Yes / No. If so, describe,

How adaptable is the candidate when faced with new situations? Readily / Moderately / Slightly

In a work situation, is the candidate's judgment Sometimes questionable / Always dependable / Usually sound

Does the candidate "blow up" under stress? Frequently / Sometimes / Never (during period 5/48 to 5/48)

Is the candidate's ability to assume responsibility and plan work Satisfactory / Unsatisfactory / Very good

Does the candidate get along with supervisors Excellent / Poorly / Adequately

Are the candidate's relationships with fellow employees Poor / Occasionally strained / Good

Is the candidate's skill in use of case work technique Adequate / Excellent / Questionable

Is the candidate's interest in the advancement of professional standards uninformed on this point / Slight / Reasonable / Keen

Is the ability of the candidate to comprehend problems Superior / Inadequate / Acceptable

RD866A
25-4-2

-1-

The following questions apply specifically to the position of Senior Social Case Worker (Child Welfare).

In case work relations, does the candidate identify herself with clients

Too much | At the professional level | Too little

Remarks.

The very brief period of Mr. Nelson's employment was a learning period for him. His performance was above average for a new employee. At this it is believed that Mr. Nelson had not had professional training.

In this respect is the applicant likely to prove SUPERIOR OR WEAK? No deficiency or weakness of consequence were noted.

What are the applicant's STRONG points? Mr. Nelson had a very pleasing personality. He was exceptionally well organized and his own standards for himself produced work of excellent quality. He willingly carried his share of the work load and at no time showed any inclination to shirk responsibility.

Extent to which applicant is recommended for this position (when "Not Recommended" or "Strongly Recommended" weaknesses or strengths should be noted.)

Not Recommended | Recommended with Hesitancy | Recommended | Recommended with Confidence | Strongly Recommended

CONCUR _____ Signature J. W. Beaver

_____ Title District Director

4-20-42
Date

RD. 266A
3-44-3

County of Los Angeles — Department of Institutions

[redacted]

[redacted]
(Make out in duplicate)

Personnel Division - Room 5020-A — DATE 6-29-53

MY PRESENT ADDRESS IS 1821 ATLANTIC AVE. LONG BEACH 702-617
Number Street City Phone

My former address was 1444 BOYCEDALE AVE. DUARTE FAIRFAX 8-9190
Number Street City Phone

MY NAME IS THOMAS W. NELSON
Please Print

My name was (if changed) _____
Please Print

I work in the MEDICAL SOCIAL SERVICE DIVISION

Have you taken a recent Civil Service Examination? Yes NO No

If so, for which position? _____

Does your name appear on any existing Civil Service List? Yes NO No

If so, which? _____

DO NOT WRITE BELOW THE DOUBLE LINE

[redacted] SIGN AND FORWARD IMMEDIATELY TO NEXT NAME ON LIST:

Forward to:	Noted	Date
[redacted]		
INFORMATION SECTION		
PERSONNEL DIVISION		
COUNTY CIVIL SERVICE COMMISSION		

8-4027 LASCH 4/52

[94]

County of Los Angeles — PERSONNEL DIVISION — Department of Charities

WORK SHEET

Date 6-28-57

☐ New ☐ Return to Duty ☐ Cancellation of Notice, Dated _____
☑ Change ☐ Triple Entry (Post-Temp) ☐ Correction of Notice, Dated _____

Employee Name 1-30	NELSON, Thomas W.		Emp. No. 31-35 66407
Address	1606 Brookdale Ave., Azusa		Phone 96-8940
Effect. Date 36-39	6 17 57	Salary Cty. 40 in 39 Check: ☐	Posted Notice 4 in 39 Check: ☐	Surround Item 1 in 37 Check: ☐
Cont. Ser. Date Cty. Only 1 in 39 Check: ☐	Short Step Adv. Date 44-45 —	Clock Loc. 46-50	Div. Code 51 21-0

Position Medical Social Worker	Position Medical Social Worker
Designated Sub. 42	Assigned Sub. 42	Designated Sub. 42	Assigned Sub 42
Item 5173A	Step 1	Salary 30	Item 54-59 5173A	Step 39 1	Salary 60-63 30.
Std. Salary 288.	Net Salary 288.	Std. Salary 64-68 288.	Net Salary 288.
Maint. Code —	Tax Code 52-4	Bureau Code 3	Maint. Code 69 —	Tax Code 70-71 52-4	Bureau Code 73 2

Assess'd. Code 74 F	Previous County Service Yes	No	Continuous Service Date 75-80 / /
Retirement % —	Certif. No. 6502J	Elig. No. 1	Req. No. —

☐ Approval for Hosts ☐ O.A.S.I. & F.S. ☐ Pend. Regular - Unassembled Item. ☐ Check Loc. Chg.
☐ Name Change Only ☐ Temp. - Perm. Reinst. Perm. Apt. at CSC ☐ Return to Duty From _____ ☐

Remarks:

FOR PERSONNEL USE ONLY

- ☑ Form Posted 7-1-57
- ☑ Index Posted 7-2-57
- ☐ Loyalty Form _____
- ☐ Vouc. Form _____
- ☐ Retire. Card _____
- ☐ Regis. Card _____
- ☐ 40 Day Note _____
- ☐ Leave of Abs. _____
- ☐ Reinst. Letter _____
- ☐ Trans. Letter _____
- ☐ Cancel M/L _____
- ☐ Vet. Training _____
- ☐ O/T Letter _____
- ☐ Release _____
- ☐ _____
- ☐ Return To _____

Anne D. Lacy
Personnel Officer - Charities

Page No. 1 of 2 By Geo. Mangurian

FOR PAYROLL USE ONLY

Ann. Rev. for 1955 St. 9-13	Sub Assigned 30-33	CSEA. Dues 68-70
Ann. Rev. for Voc. 14-16	Item 34-38	7th St. Dues 71-73
Employee Number 19-23	Step 39	8th St. Dues 74-76
Rate 24-27	Code 3 if yes 28	9th St. Dues 77-80
Month St. App. 40-42	Voc. Rev. 43-45	
Div. 51	Overtime Rev. 46-47	

By _____

COUNTY OF LOS ANGELES

June 25, 1952

PERSONNEL DIVISION
HIGH DESERT ADULT UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

CHANGE NOTICE

NAME: NELSON, Thomas W. EMPLOYEE No. 66407 DEPT. No. 21-0 (44)

ADDRESS: 1606 Brycedale Ave., Duarte EL 89190 DIVISION: Med. Soc. Serv.

	ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	OLD SALARY	NEW SALARY
FROM	5173A-1	Med. Social Worker, Temp.(EXEMPT)	30	288.	288.
TO	5173A-1	Med. Social Worker, Temp.	30	288.	288.

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

WITHHOLDING TAX CODE: 52-4

AUTHORITY: Certif.#6802 Elig.#1

RETIREMENT PERCENTAGE:

EFFECTIVE DATE: June 17, 1952

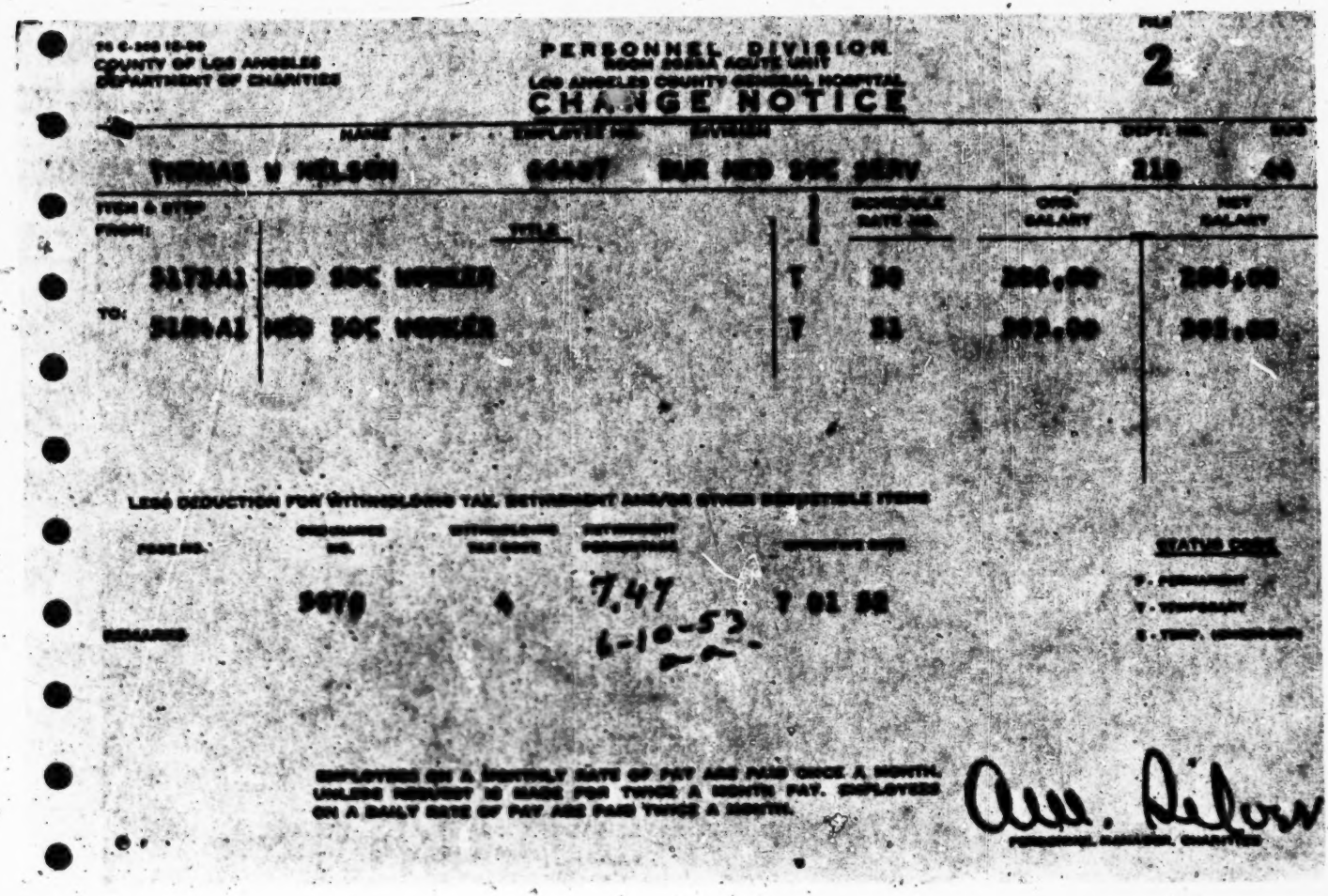
CC-BPA-1-3
- FILE
- SERVICE REPORT
- BPA-2
- DIVISION HEAD
- EMPLOYEE

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

10

Geo. Nelson
EMPLOYEE'S SIGNATURE, CHARITON

LACGH 556 8SM 8-51



75 C-305 10-50
COUNTY OF LOS ANGELES
DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
ROOM 24A24 ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

PAGE 2

CHANGE NOTICE

NAME	EMPLOYEE NO.	DIVISION	DEPT. NO.	SUB
THOMAS V NELSON	64487	SUR MED SOC SERV	218	46

FROM & STEP	TITLE		CONTROLLER RATE NO.	GROSS SALARY	NET SALARY
FROM:	SR MED SOC WORKER	T	30	306.00	306.00
TO:	SR MED SOC WORKER	T	33	302.00	302.00

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAYE NO.	EXEMPTIONS NO.	WITHHOLDING TAX CODE	RETIREMENT PERCENTAGE	EFFECTIVE DATE	STATUS CODE
	3079	4	7.47	7 01 52	P - PERMANENT T - TEMPORARY S - TEMP. SEASONAL

REMARKS: 6-10-53

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

Wm. Nelson
PERSONNEL MANAGER, CHARITIES

[95]

PLEASE FILE ON PERSONNEL RECORD.

TELEGR 6-51

LOS ANGELES COUNTY Myrtle E Silver LETTERGRAM

To Mrs. Myrtle Silver, Director, B.M.S.S. From Long Beach Medical Aid Date 9-22-52

Subject: No.

Please be informed that I received certificate No. 4897 dated August 5, 1952, stating that I have qualified as a registered social worker.

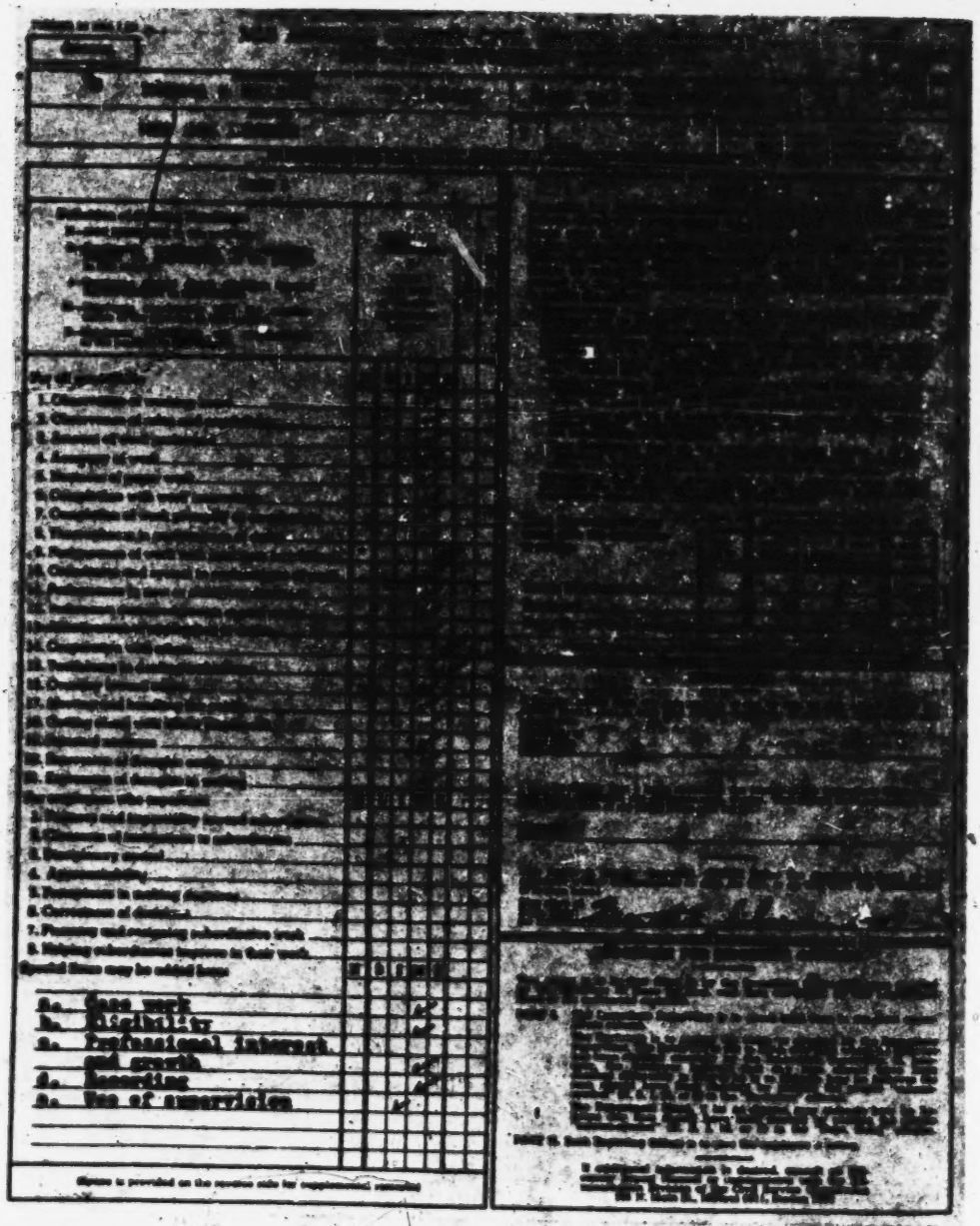
Thomas W. Nelson

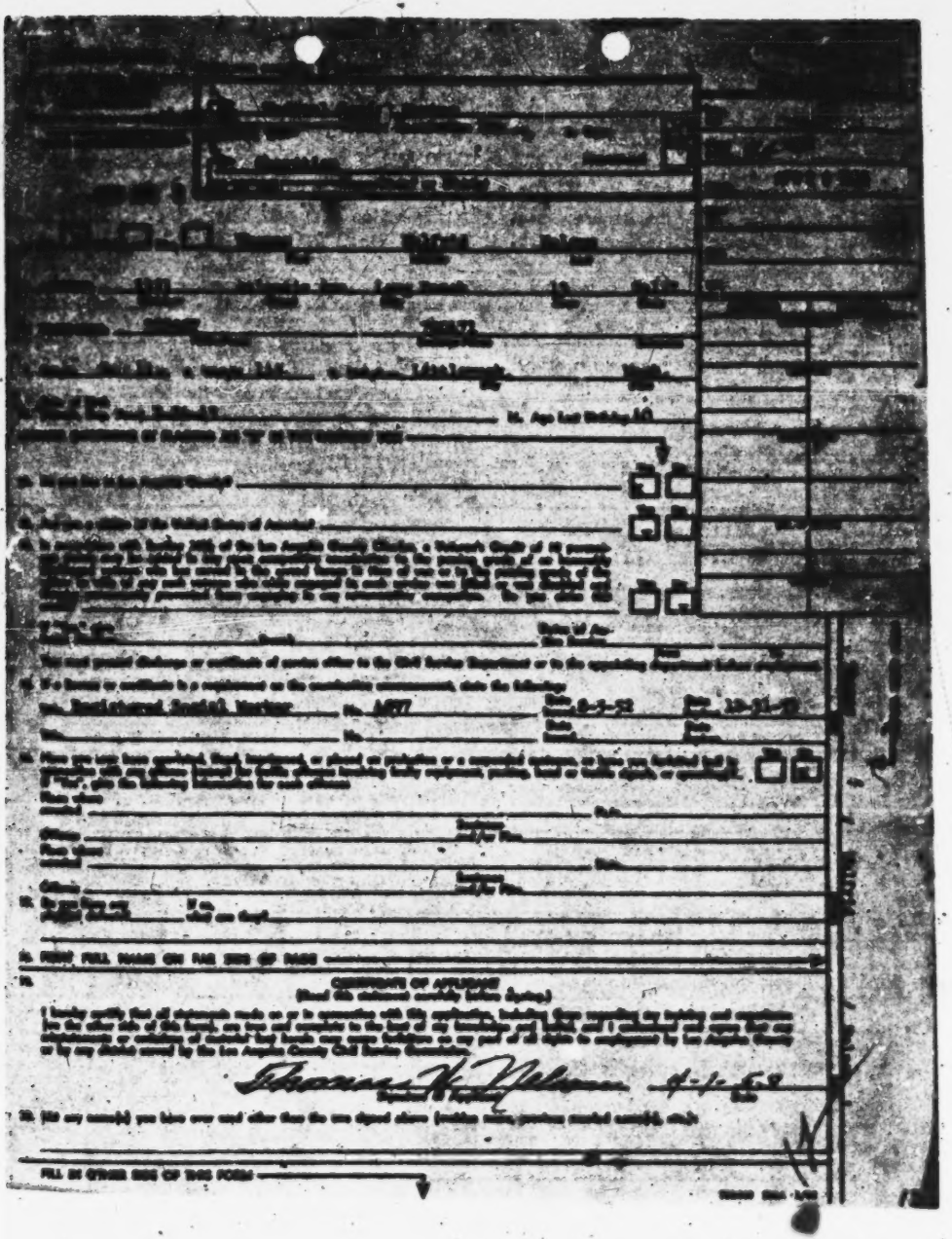
Thomas W. Nelson,
Medical Social Worker

N-h

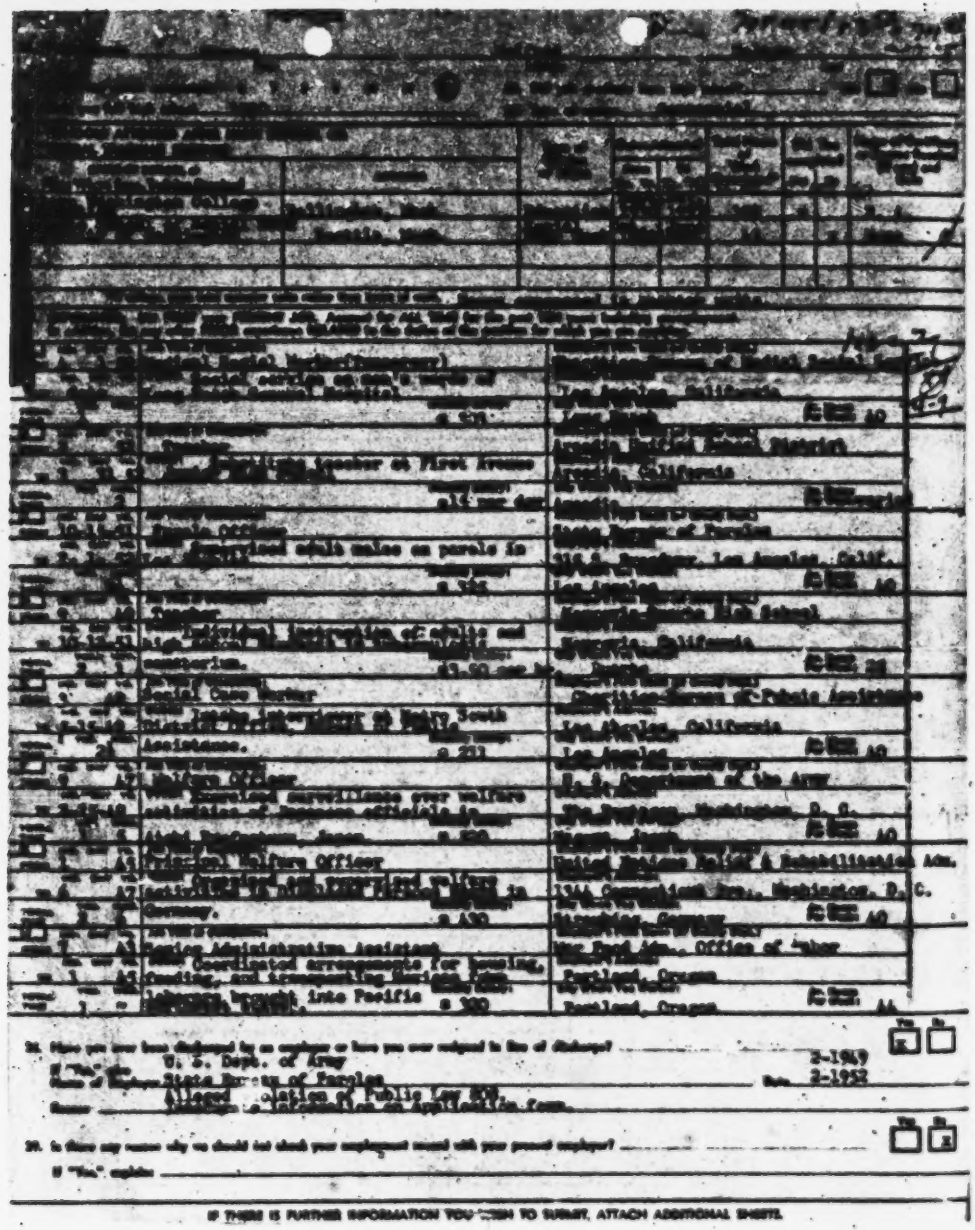
Postal

[98]





[106]



34. Have you ever been discharged by an employer or have you ever resigned in lieu of discharge? ..... Yes ☒ No ☐

If "Yes," give: U. S. Dept. of Army — 2-1949

Name of Employer: State Bureau of Parolee — Date: 2-1952

Reason: Alleged violation of Public Law 808. Misrepresentation on Application Form.

35. Is there any reason why we should not check your employment record with your present employer? ..... Yes ☐ No ☒

If "Yes," explain .....

IF THERE IS FURTHER INFORMATION YOU WISH TO SUBMIT, ATTACH ADDITIONAL SHEETS.

m52

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION
REFERENCE REPORT
FOR

MEDICAL SOCIAL WORKER

TO: Mr. A. W. Silver Date April 7, 1953

CANDIDATE Thomas Wolfrid Nelson
USES - Long Beach 6/1/52 to date

Our records indicate that you can give us information concerning the competence of this candidate for the above position.

By check marks in the appropriate places, please answer the following questions, using as the basis for your answers, observation, knowledge, available records or conference with persons who supervised the candidate.

Is the candidate's appearance acceptable for this type of work? ✓ Yes ___ No ___ Remarks ___

Do you know of any physical limitation which would affect the candidate's performance on this job. ___ Yes ✓ No If so, describe, ___

How adaptable is the candidate when faced with new situations? ✓ Extremely ___ Moderately ___ Slightly

In a work situation, is the candidate's judgment ___ Sometimes questionable ✓ Always dependable ___ Usually sound

Does the candidate "blow up" under stress? ___ Invariably ___ Sometimes ✓ Never

Is the candidate's ability to assume responsibility and plan work ✓ Satisfactory ___ Unsatisfactory ___ Very good

Does the candidate get along with supervisors ___ Excellent ___ Poorly ✓ Adequately

Are the candidate's relationships with fellow employees ___ Poor ___ Occasionally strained ✓ Good

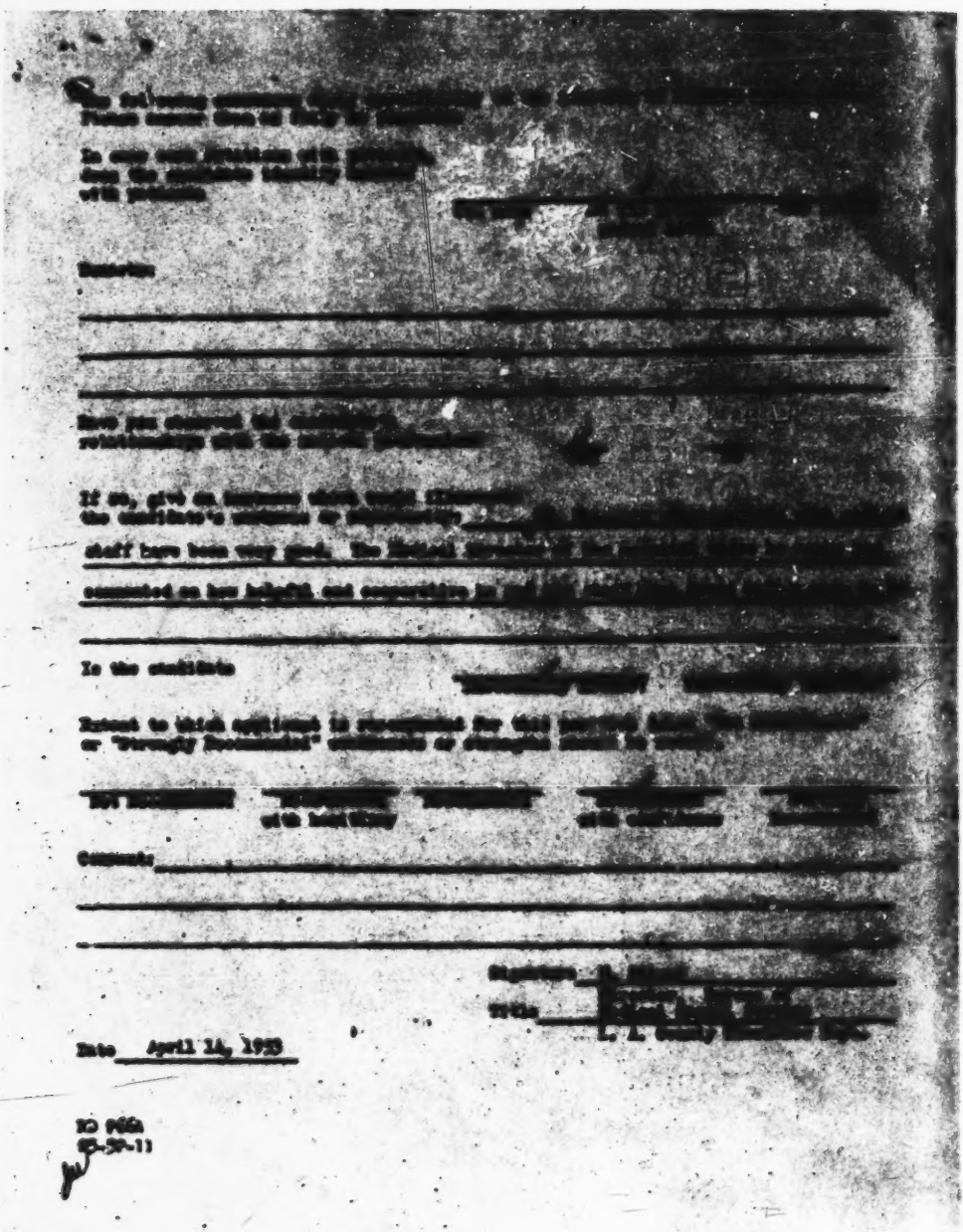
Is the candidate's skill in use of the work technique ✓ Adequate ___ Excellent ___ Questionable

Is the candidate's interest in the advancement of professional standards ___ Slight ✓ Reasonable ___ Keen

Is the ability of the candidate to comprehend problems ___ Superior ___ Inadequate ✓ Acceptable

RPOfdA
25-4-2

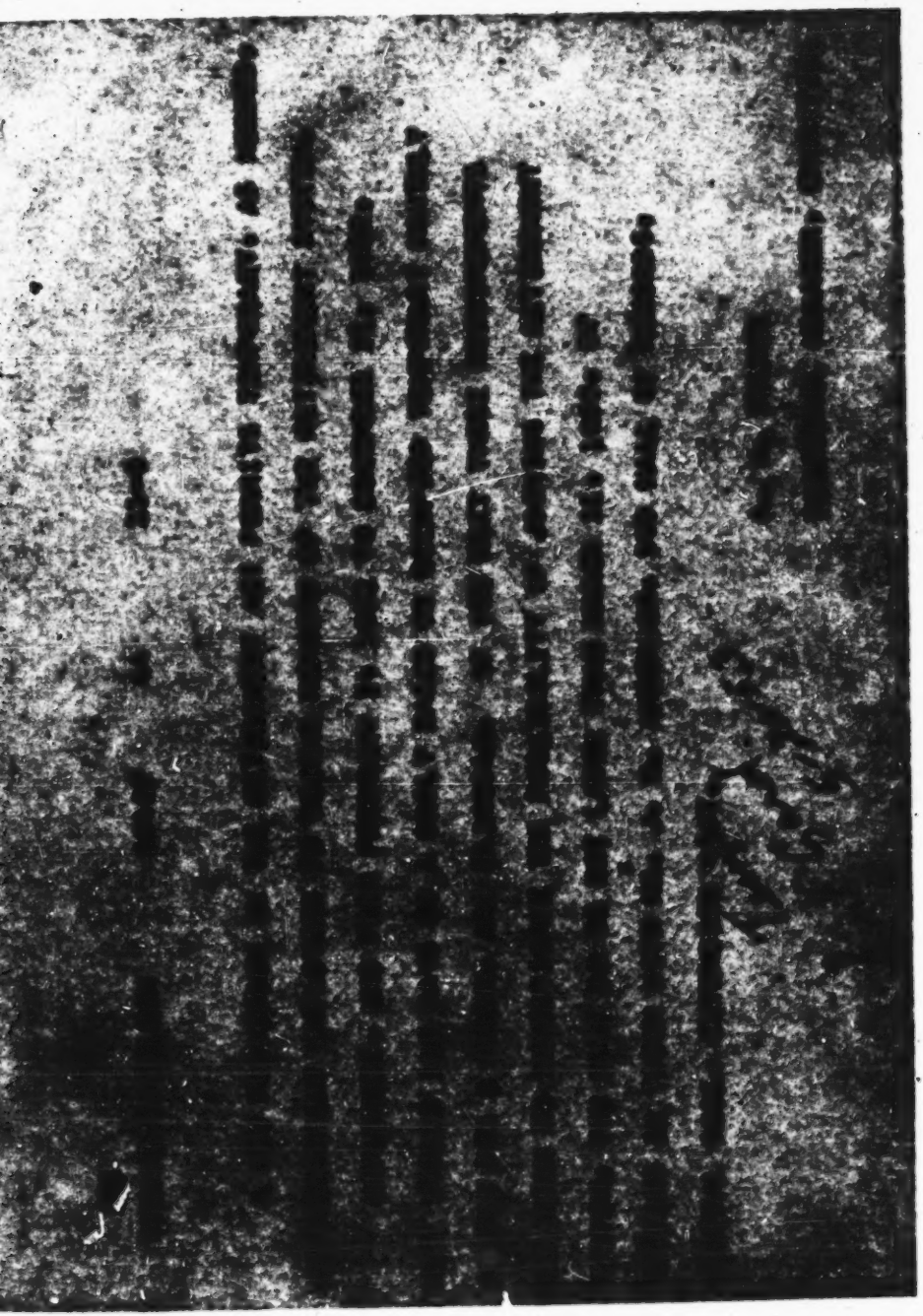
[102]



Date April 14, 1938

RD 966A
10-39-11

03]



LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

COUNTY CIVIL SERVICE BUILDING
501 NORTH MAIN STREET
LOS ANGELES 12, CALIFORNIA

NOTICE OF RESULT OF MEDICAL EXAMINATION

DATE: JUN 16 1953

Thomas W. Nelson
1321 Atlantic Avenue
Long Beach 13, California

POSITION: Med. Soc. Worker

Following medical examination, you have been accepted as meeting the physical standards for appointment to the above position.

A copy of the Examining Physician's report has been sent to the department which is employing you and may be inspected by you at the Personnel Office there, or if more convenient, at our office.

Lillian Emrick
Medical Record Clerk

cc: Med. Soc. Service

County of Los Angeles — PERSONNEL DIVISION — Department of Charities

WORK SHEET

Date 6-18-53

☐ New ☐ Return to Duty ☐ Cancellation of Notice, Dated
☑ Change ☐ Triple Salary (Psych-Temp) ☐ Correction of Notice, Dated

Employee Name 1-18: NELSON Thomas W			Emp. No. 19-23: 61427
Address: 1321 Alta Ave Long Beach 13			Phone: 70-2581
Effect. Date 24-29: 6/16/53	Salary Chg. 0 to 39 Check: ☐	Posted Subtract 0 to 39 Check: ☐	Borrowed Item 1 to 39 Check: ☐
Canc. Ser. Date Chg. Only 1 to 39 Check: ☐	Next Step Adv. Date 44-48: 7 54	Clock Loc. 49-50	Div. Code 51: 21-U

Position: Jud Tec Hosp	Position: Jud. Tec Worker
Budgeted Sub. 44 / Assigned Sub. 44	Budgeted Sub. 44 / Assigned Sub. 44
Item 5184A / Step 1 / Subcl. 31	Item 5184UN / Step 2 / Subcl. 31
Grd. Salary 303 / Net Salary 303	Grd. Salary 319 / Net Salary 319
Shift Code / Tax Code 53-4 / Status Code 2	Union Code / Tax Code 53-4 / Status Code 1

Arrang'n. Code 74: F / Previous County Service: No. / Continuous Service Date 75-80:
Retirement % 747 / Certif. No. 7603 / Elig. % 3 / Req. No.

☐ Approved for Check ☐ U.S.C. & F.B. ☐ Pmnt. Register - Unassembled Item ☐ Clock Loc. Chg
☐ Name Change Only ☐ Temp - Perm. Payment Pmnt. App. of CSC ☐ Return to Duty From ☐

Remarks:

FOR PERSONNEL USE ONLY

- ☑ Form Noted 6-19-53
- ☑ Index Noted 6-19-53
- ☐ Loyalty Form
- ☐ Voor. Form
- ☐ Notary Card
- ☐ Negro Card
- ☐ 90 Day Ends
- ☐ Leave of Abs
- ☐ Retest Letter
- ☐ Trng Letter
- ☐ Cancel N/L
- ☐ Vet. Training
- ☐ O/T Letter
- ☐ Release
- ☐ Return To

Page No. 2 Desk By Ron

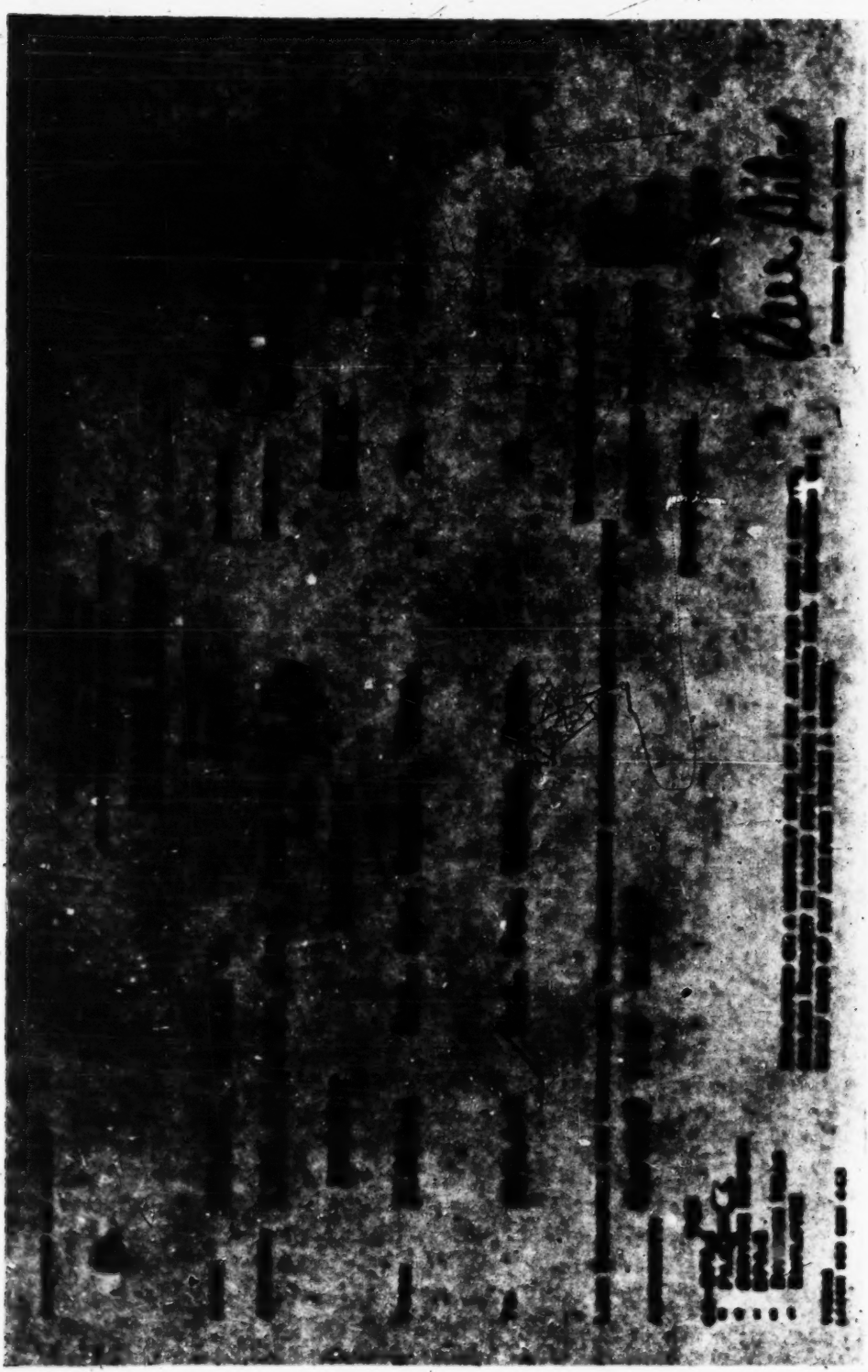
Personnel Manager Charities

FOR PAYROLL USE ONLY

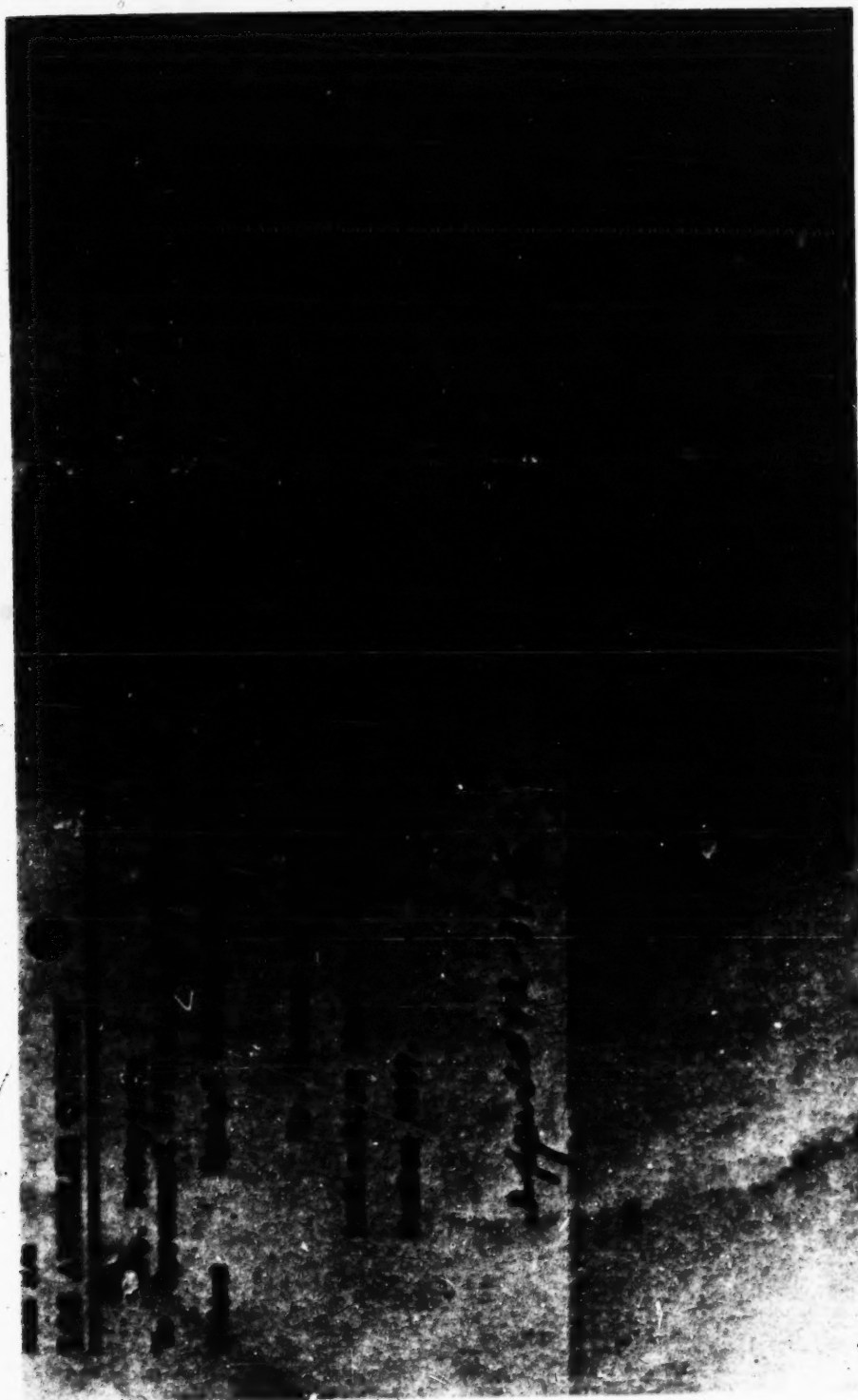
Acc Hrs. for 100% SL 9-13	Sub Assigned 52-53	CSEA Hrs 68-70
Acc Hrs for Vac 14-18	Item 54-58	75% SL Hrs 71-73
Employee Number 19-23	Step 59	100% SL Hrs 74-76
Date 24-27	Code 3 in col. 60	50% SL Hrs 77-79
Month SL App 49-50	Vac Hrs 61-63	
Div 51	Overtime Hrs 64-67	

By

[105a]



[106]



75 C-368 11-52
COUNTY OF LOS ANGELES
DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
ROOM 20B2A ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

CHANGE NOTICE

FILE 2

NAME	EMPLOYEE NO.	DIVISION	DEPT. NO.	SUB
NELSON THOMAS W	66407	CHAR MED SOC SER	21-4	44

ITEM & STEP	TITLE	STATUS	SCHEDULE RATE NO.	GRO. SALARY	NET SALARY
FROM: 5184A2	MED SOC WORKER	P	31	319.00	319.00
TO: 5184A2	MED SOC WORKER	P	32	337.00	337.00

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAGE NO.	ORDINANCE NO.	WITHHOLDING TAX CODE	RETIREMENT PERCENTAGE	EFFECTIVE DATE
	6222	04	7.78	7 01 53

REMARKS

STATUS CODE
P - PERMANENT
T - TEMPORARY
E - TEMP. (EMERGENCY)

* EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH, UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

Ann. Dilworth
PERSONNEL MANAGER, CHARITIES

NELSON AND ROBERTS, COUNTY OF LOS ANGELES ET AL.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

REPORT ON PROBATIONER

Name Nelson, Thomas W. Department Medical Social Service Item No. 2186

Position Medical Social Worker Period of Probation Begins 6-16-53 Period of Probation Ends 12-15-53 This Report to be Filed

WHEN TO FILE THIS REPORT

This Report on Probationer is to be completed by the end of the 5th month of the period of probation, and should be filed with the Commission not later than the date shown above. The report may be submitted at any time before the end of the 5th month if it is desired to discharge, reduce or release the probationer.

If, between the time this report is filed and the end of the probationary period, the Department Head should desire to change it in any respect, he is to notify the Commission in writing. If such notice is not received prior to the end of the period of probation, it will be deemed that there has been no change in the probationer's performance since the report was filed, and the report will be considered to represent the probationer's performance for the entire six months probationary period.

PART I

Consider carefully the probationer's performance on the job in respect to each item and indicate your conclusions in the space provided. (See instructions on the reverse side.)

Definition of Column Headings:

N—NOT ESSENTIAL to this position.

B—Employee's performance was definitely BELOW the requirements of the position in this respect.

I—Employee should direct attention toward IMPROVEMENT in this respect.

M—Employee constantly MET the requirements of the position in this respect.

E—Employee EXCEEDED the requirements of the position or EXCELLED in this respect.

Items Upon Which Probationer is to be Rated	IMMEDIATE SUPERVISOR (WHOM HAS HAD MOST OPPORTUNITY FOR OBSERVATION) N	B	I	M	E
1. Quality of work				X	
2. Quantity of work				X	
3. Work habits				X	
4. Relations with others				X	
5. Observance of rules & regulations				X	
6. Supervision of others	X				

PART II

EFFICIENCY RATING

Each Reporting Officer is to give the probationer a rating in accordance with the Rating Standards on the reverse side.

	Rating/Activity Group: Unsatisfactory	Fairly Satisfactory	Satisfactory	Very Satisfactory	Outstanding
Immediate Supervisor			X		
Reviewer					
Dept. Head (Final Rating)			✓		

If a rating of "Unsatisfactory" or "Outstanding" is given, it must be supported by a signed statement of the specific reasons therefore in the space for "Remarks" provided on the reverse side of this form.

PART III

For use only when probationary period is incomplete.

The probationer did not complete his period of probation in the position named above for the following reason: (Check appropriate reason.)

- ☐ Left position named above to accept another position in the County service ..... Date
- ☐ Resigned from County Service ..... Date
- ☐ Failed to pass physical examination ..... Date
- ☐ ..... Date

PART IV

RECOMMENDATIONS TO DEPARTMENT HEAD

Each Reporting Officer is to indicate whether or not the probationer be retained in the position, and SIGN THE REPORT.

Do you recommend that the probationer's final and complete appointment be approved? (If your answer is "No" state reasons on reverse side hereof.)

Yes ☒

No ☐ Vera Postel Date 12/1/53
Signature of Immediate Supervisor

Yes ☐

No ☐ Date
Signature of Reviewer

PART V

ACTION OF DEPARTMENT HEAD

(Do not make any checks in Part V if Part IV has been checked.)

To the Civil Service Commission:

☒ I APPROVE the probationer's final and complete appointment.

I DO NOT APPROVE the probationer's final and complete appointment for the reasons indicated or stated hereon and hereby request the Civil Service Commission's consent to:

☐ Reduce the probationer to the position of .....

☐ Discharge the probationer from the service.

SIGNATURE

Reports requesting consent to release, reduce or discharge the probationer should be signed by the Department Head. All other reports may be signed either by the Department Head or a person authorized by him.

12-8-53 Date

Signature Myrtle E. Schlaver

[109]

Please file on Personnel Board
by Mr. Silver

County of Los Angeles
Probation Office
Los Angeles 12, California

KARL HOLTON
PROBATION OFFICER
JOHN M. BUSH
ASSISTANT PROBATION OFFICER

REFER TO: Thomas W Nelson

January 28 1954

Vera Postel, Director
Los Angeles County Department of Charities
Medical Aid District Office
1931 American Avenue
Long Beach California

Re: Nelson, Thomas
Med. Soc. Wkr.

Dear Miss Postel

We are writing to you regarding Thomas W. Nelson, who is now employed by your agency as a Medical Social Worker, and who is applying for the position of Deputy Probation Officer in the Los Angeles County Probation Department.

The job of Deputy Probation Officer, involves working as a Probation Case Worker with individuals who have violated the law in some respect and have been placed on probation by a court. In the Juvenile Division, a Deputy Probation Officer works also with boys who have been neglected and need care. The job requires a person with warmth and understanding, social and emotional maturity. The person must be able to organize and manage a relatively large caseload, must be capable of handling job pressures, and in addition must be able to operate successfully as a helping person within an authoritative setting.

We would like to confirm Mr. Nelson's employment by your agency, and get some understanding of his performance. Additional information which would help us to evaluate Mr. Nelson's qualifications and abilities, in relation to the job of Deputy Probation Officer, will be appreciated.

Thank you very much for your cooperation and assistance in this matter.

Yours sincerely

KARL HOLTON
PROBATION OFFICER

Bernard Kogen
Training Supervisor

dw

2/2/54 answered this by phone
Reported Mr Nelson is a good
average worker, dependable
mature pleasant and composed.
Silver

[110]

2/9/54 Telecon Personnel Board
Angela Silver Dir Bonnie

1321 Atlantic Avenue
Long Beach 13, California
February 5, 1954

Los Angeles County Civil Service Commission
201 North Main Street
Los Angeles, California

Gentlemen:

I am now listed as number nine on the civil service list for Deputy Probation Officer. Since it is my present intention to remain in the employ of the Bureau of Medical Social Service, I am requesting that my name be placed on the inactive list for Deputy Probation Officer.

Your cooperation in this matter is appreciated.

Very truly yours,

Thomas W. Nelson

Thomas W. Nelson

cc: Mr. Bernard Hogan
Training Supervisor
Probation Department

Mrs. Myrtle Silver
Director, Bureau of Medical Social Service

7A-162 4-54

COUNTY OF LOS ANGELES
DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
ROOM 2020A ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

CHANGE NOTICE

FILE 2

NAME	EMPLOYEE NO	DIVISION	DEPT. NO.	SUB
NELSON, Thomas W.	66407	Medical Social Service	21-0	44

ITEM & STEP FROM / TO	TITLE	STATUS	SCHEDULE RATE NO	ORD. SALARY	NET SALARY
5184A-2	Medical Social Worker	P	32	337.	337.
5184A-3	Medical Social Worker	P	32	355.	355.

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAGE NO.	ORDINANCE NO	WITHHOLDING TAX CODE	RETIREMENT PERCENTAGE	EFFECTIVE DATE
		54-4	7.78	7-1-54

STATUS CODE
P - PERMANENT
T - TEMPORARY
E - TEMP. (EMERGENT)

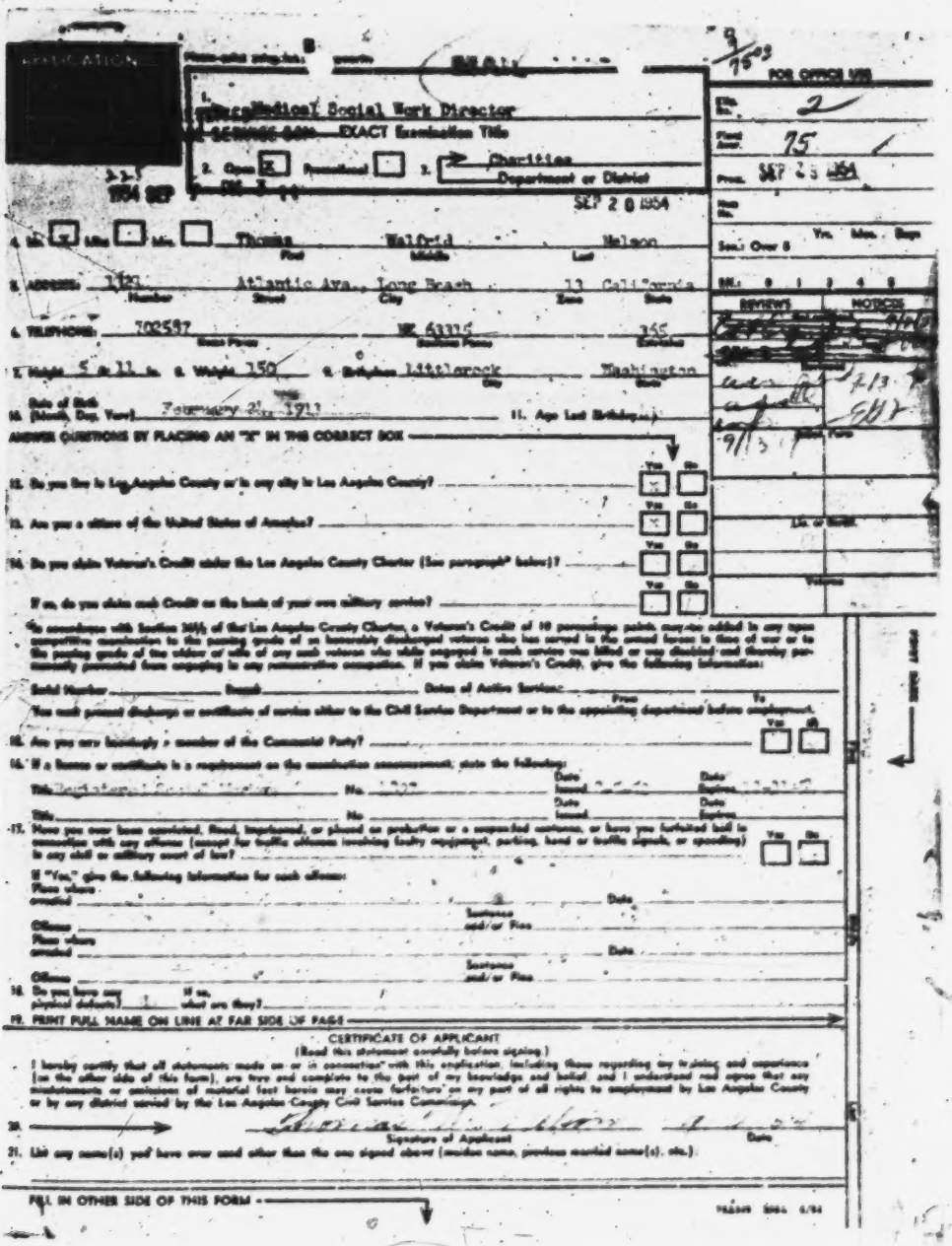
REMARKS

Step advance subject to approval with CSC.

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH, UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

Wm. Nelson
PERSONNEL MANAGER, CHARITIES

NELSON, THOMAS W. ET AL. vs. COUNTY OF LOS ANGELES, ET AL.



APPLICATION

Please write plainly in ink

1. Psychiatric Social Work Director
EXACT Examination Title

2. Open [X] Promotional [ ] 3. Charities Department or District

SEP 20 1954

4. Mr. [X] Miss [ ] Mrs. [ ] Thomas (First) Walfrid (Middle) Nelson (Last)

5. ADDRESS: 1121 (Number) Atlantic Ave., (Street) Long Beach (City) 13 (Zone) California (State)

6. TELEPHONE: 709597 (Home Phone) WE 63316 (Business Phone) 365 (Extension)

7. Height 5 ft 11 in. 8. Weight 150 9. Birthplace Littlerock (City) Washington (State)

10. Date of Birth (Month, Day, Year) February 21, 1913 11. Age Last Birthday ( )

ANSWER QUESTIONS BY PLACING AN "X" IN THE CORRECT BOX

	Yes	No
12. Do you live in Los Angeles County or in any city in Los Angeles County?	X	
13. Are you a citizen of the United States of America?	X	
14. Do you claim Veteran's Credit under the Los Angeles County Charter (See paragraph* below)?		
If so, do you claim such Credit on the basis of your own military service?		

*In accordance with Section 35½ of the Los Angeles County Charter, a Veteran's Credit of 10 percentage points may be added to any open competitive examination to the passing grade of an honorably discharged veteran who has served in the armed forces in time of war or to the passing grade of the widow or wife of any such veteran who while engaged in such service was killed or was disabled and thereby permanently prevented from engaging in any remunerative occupation. If you claim Veteran's Credit, give the following information:

Serial Number _____ Branch _____ Dates of Active Service: From _____ To _____

You must present discharge or certificate of service other to the Civil Service Department or to the appointing department before employment.

	Yes	No
15. Are you now knowingly a member of the Communist Party?		

16. If a license or certificate is a requirement on the examination announcement, state the following:

Title Registered Social Worker No. 1307 Date Issued [illegible] Date Expires [illegible]

Title _____ No. _____ Date Issued _____ Date Expires _____

	Yes	No
17. Have you ever been convicted, fined, imprisoned, or placed on probation or a suspended sentence, or have you forfeited bail in connection with any offense (except for traffic offenses involving faulty equipment, parking, load or traffic signals, or speeding) in any civil or military court of law?		X

If "Yes," give the following information for each offense:

Place where arrested _____ Date _____

Offense _____ Sentence and/or Fine _____

Place where arrested _____ Date _____

Offense _____ Sentence and/or Fine _____

18. Do you have any physical defects? [ ] If so, what are they? _____

19. PRINT FULL NAME ON LINE AT FAR SIDE OF PAGE

CERTIFICATE OF APPLICANT

(Read this statement carefully before signing)

I hereby certify that all statements made on or in connection with this application including those regarding my training and experience (on the other side of this form), are true and complete to the best of my knowledge and belief and I understand and agree that any misstatements or omissions of material fact herein may cause forfeiture on my part of all rights to employment by Los Angeles County or by any district served by the Los Angeles County Civil Service Commission.

20. _____ Signature of Applicant _____ Date

21. List any name(s) you have ever used other than the one signed above (maiden name, previous married name(s), etc.)

FILL IN OTHER SIDE OF THIS FORM

POR OFFICE USE

Ex. 2

Final Date 75

Proc. SEP 23 1954

Name file

Seni. Over 5 Yrs. Mos. Days

Bks. 0 1 2 4 5

REVIEWS NOTICES

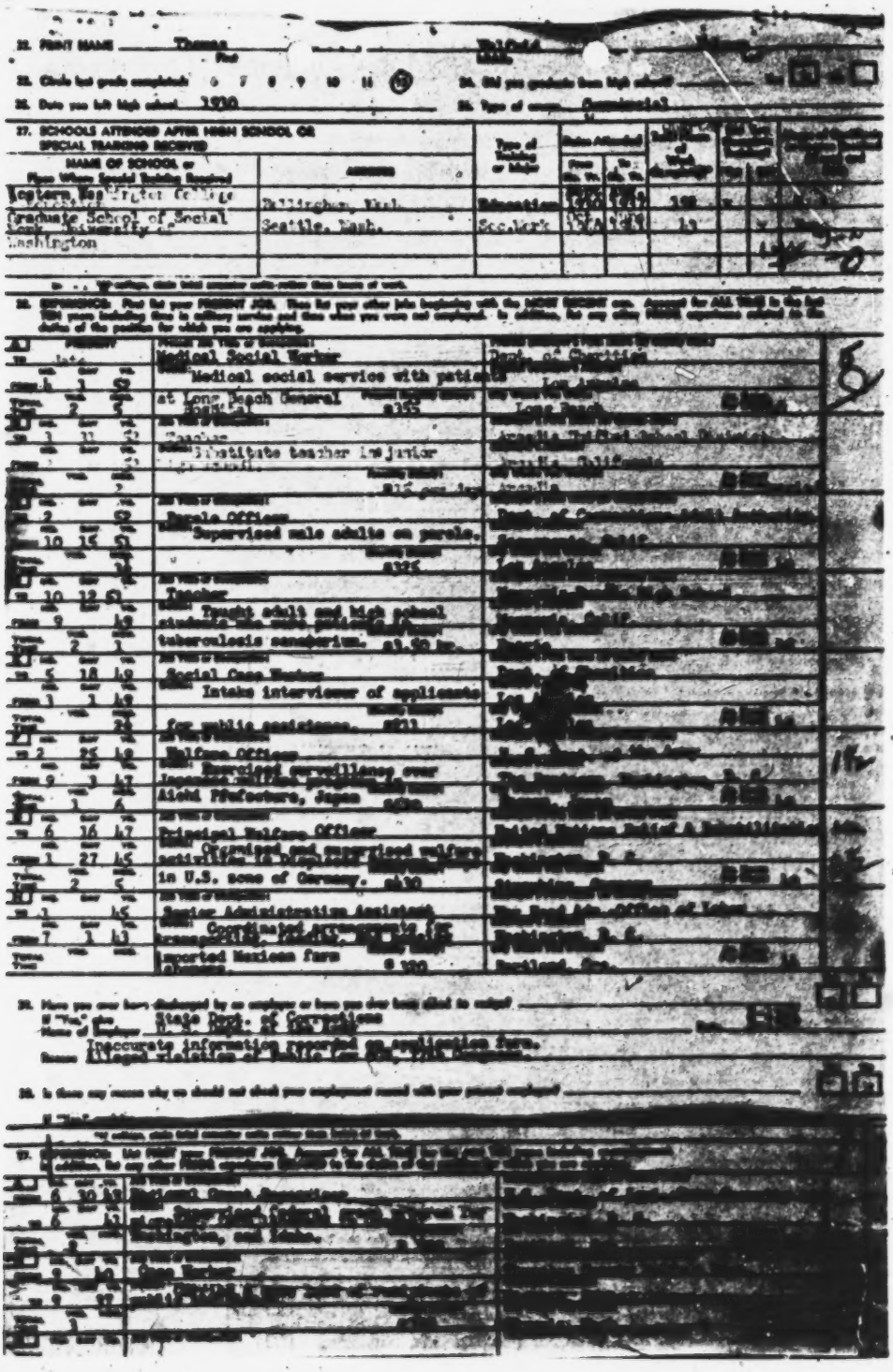
Eligible Pos.

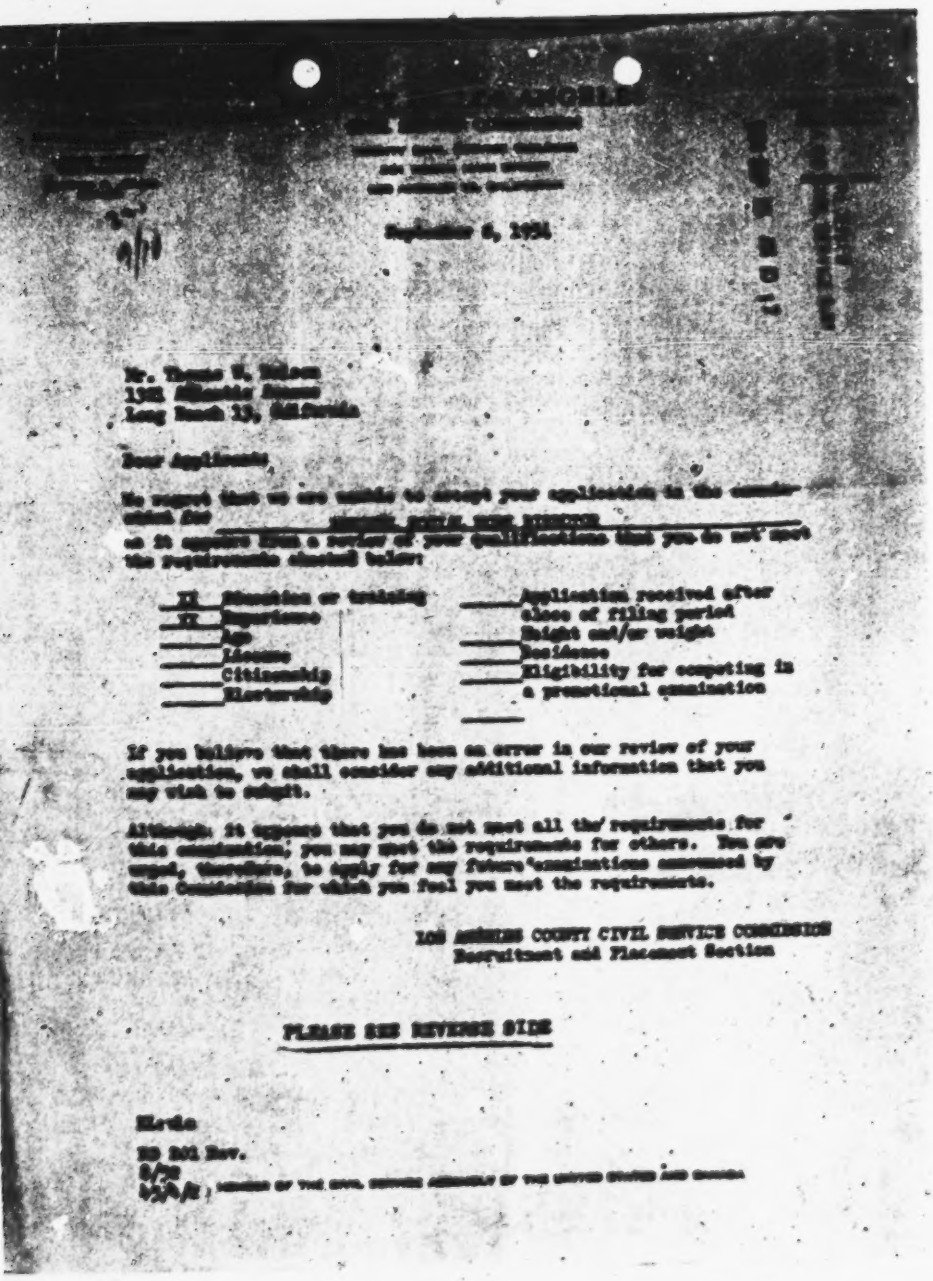
Ltr. of Notice

Veteran

SAME LINE

[113]





September 6, 1934

Mr. Thomas W. Nelson
1921 Hillside Avenue
Long Beach 13, California

Dear Applicant:

We regret that we are unable to accept your application in the examination for _____ as it appears from a review of your qualifications that you do not meet the requirements checked below:

___ Education or training	___ Application received after close of filing period
___ Experience	___ Height and/or weight
___ Age	___ Residence
___ License	___ Eligibility for competing in a promotional examination
___ Citizenship	
___ Electorship	

If you believe that there has been an error in our review of your application, we shall consider any additional information that you may wish to submit.

Although it appears that you do not meet all the requirements for this examination, you may meet the requirements for others. We are urged, therefore, to apply for any future examinations announced by this Commission for which you feel you meet the requirements.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION
Recruitment and Placement Section

PLEASE SEE REVERSE SIDE

Herda

CS 201 Rev.
8/32

September 12, 1954

Gentlemen:

I believe an error has been made in reviewing my qualifications. Your bulletin announcement gives as an alternative to the first qualification the following: "Completion of one-year graduate curriculum in an accredited school of social work including supervised field work in a case-work agency, and three years experience as described above. Note: two or more years of supervised social case-work experience in family or child welfare in a recognised case work agency may be substituted for one year of the required experience."

As my application shows I completed one year of study at the Graduate School of Social Work, University of Washington. This study included supervised field work done with King County Welfare Department. It is my understanding the University of Washington school is an accredited school of social work.

My application further shows I have completed two years and five months employment with Los Angeles County as a Medical Social Worker. My employment as a case worker for three years with Thurston County Welfare Department, Olympia, Washington more than fulfills the requirement for additional case-work experience.

On the basis of the above clarification will you kindly give my application further consideration.

Very truly yours,

Thomas N. Nelson

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

REPORT OF PERFORMANCE EVALUATION

53

COMMENTS

ADAPTABILITY ——— B M E

NELSON THOMAS W. 66407 O 44

County of Los Angeles

DO NOT BEND, FOLD,

CREASE OR OTHERWISE

MUTILATE THIS CARD

Personnel Division Department of Charities

CERTIFICATION OF DELIVERY
REPORT OF PERFORMANCE EVALUATION

I hereby certify that a copy of Report of Performance Evaluation for the period ended November 30, 1954 was given by me on this date to the above named employee.

(Signed) _____

(Title) _____

Date 12-2-54

Note: This card must be returned to the Personnel Division as soon as it is signed

CHANGE NOTICE

2

NELSON THOMAS R	66407	CHAR MED SOC SER			28-0	44
				SCHEDULE RATE NO	ORIG SALARY	NEW SALARY
5184A3	MED SOC WORKER			P 32	355.00	355.00
5184A4	MED SOC WORKER			P 34	417.00	417.00

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAGE NO	ORDINANCE NO	WITHHOLDING TAX CODE	RETIREMENT PERCENTAGE	EFFECTIVE DATE
	6699	4	7.78	07 01 55

STATUS CODE

P PERMANENT
T TEMPORARY
E TEMP (EMERGENT)

REMARKS

STEP ADV SUBJ TO APP OF CSC

91 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

REPORT OF PERFORMANCE EVALUATION

NELSON, THOMAS W — 6062 — EMAH MED SOC SER

MED SOC WORKER

CHECK ITEMS	CIRCLE FACTOR RATINGS	COMMENTS
	B = Performance BELOW Requirements M = Performance MET Requirements E = Performance EXCEEDED Requirements	

1. QUANTITY → B M (E)
   - Amount of work performed
   - Completion of work on schedule

2. QUALITY → B (M) E
   - Accuracy
   - Neatness of work product
   - Thoroughness
   - Oral expression
   - Written expression

3. WORK HABITS → B M (E)
   - Observance of working hours
   - Attendance
   - Observance of safety regulations
   - Observance of other rules
   - Compliance with oral instructions
   - Orderliness of work
   - Application to work

4. PERSONAL RELATIONS → B (M) E — E.C.
   - Getting along with fellow employees
   - Meeting and handling the public
   - Personal appearance

5. ADAPTABILITY → B M (E)
   - Performance in new situations
   - Performance in emergencies
   - Performance with [illegible]

6. SUPERVISORY ABILITY → B M E
   - Planning and assigning
   - Training and instructing
   - Directing others
   - Evaluating performance
   - Leadership
   - Maintaining discipline
   - Fairness and impartiality
   - Approachability

OVER ALL RATING →

SIGNATURES OF REPORTING OFFICERS

RATED Edythe Cotton 1-4-56

REVIEWED

DEPT HEAD OR ASST [illegible] 1-17-56

66407

County of Los Angeles

DO NOT BEND, FOLD, CREASE OR OTHERWISE MUTILATE THIS CARD

H-38 3/55

Personnel Division Department of Charities

CERTIFICATION OF DELIVERY
REPORT OF PERFORMANCE EVALUATION

I hereby certify that a copy of Report of Performance Evalnation for the period ended November 30,1955 was given by me on this date to the above named employee.

(Signed) _____

(Title) _____

Date 9 / 1 / 56

Note: This card must be returned to the Personnel Division as soon as it is signed.

LOS ANGELES COUNTY [illegible] LETTERGRAM

To: From: Date 4/11/56

Subject MEMORANDUM FOR FILE OF THOMAS W. NELSON No.

Received from Charities Personnel Office the following:

(1) Face Sheet dated March 2, 1949 signed by Thomas W. Nelson

(2) Employee Information Sheet dated April 1, 1952 signed by Thomas W. Nelson

(3) Report of interview with Thomas W. Nelson dated April 1, 1952 signed by Dorothy E. White

Dorothy E. Swenson #5117

Ext. 2471 Dept. Counsel

RECORD OF SERVICE

Board Order of 2-19-53 (Minute Book No. 170, Page 254)

The attached notice of Re Possible Appearance of Certain Employees Before the House Un-American Activities Committee

was personally served upon Thomas W. Nelson

Name of Employee

at Long Beach Hospital, 2597 Redondo Blvd., Long Beach

Address, office, residence, or other place at which notice was served

by the undersigned at 1:15 P.M. April 4, 1956

Time Date

Name of person serving notice

Personnel Manager, Charities

Title

Subscribed and sworn to before me

this 4th day of April 1956

Ralph E. Hoffy, County Clerk

By Blair C. Adams

Deputy County Clerk

BOOK CASES REV. 4/53 MJ

COUNTY OF LOS ANGELES

DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
Room 2020-A
Los Angeles County General Hospital

SEPARATION FROM SERVICE NOTICE

Date 5-2-56

NAME Nelson, Thomas W.

EMPLOYEE # 66407

DEPARTMENT Charities-Med. Soc. Serv.

Discharged

LAST DAY WORKED	5-2-56 (4 hrs)
REGULAR VACATION	5-2 (4 hrs) to 5-15 (7 hrs) 3/5
LEAVING VACATION	5-16 to 5-21-56 4 days
DAYS OFF	—
HOLIDAYS	—
OVERTIME	—
COSL	—

3/5 5-2-56 (4 hrs)

aiwop 5-15 (1 hr)

5-1320 4/54

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

REQUEST FOR LEAVE OF ABSENCE AND VACATION

7aR378 25 3/54

Submit in Duplicate to Civil Service Commission

To the Los Angeles County Civil Service Commission:

I hereby request approval of absence from regular duty in the position of Medical Social Worker

Vacation with pay Regular days, leaving 4 wk. last

leave without pay from to inclusive days

My reason for this request is Leaving vacation

Discharged.

(Signed) Thomas W. Nelson 5-3-56
(Employee) Date

Approved: Thomas W. Nelson
Department Charities-Med.Soc.Serv.

By Department Head or Authorized Representative

Approved COUNTY CIVIL SERVICE COMMISSION

By Secretary and Chief Examiner

THIS SPACE FOR USE OF COMMISSION ONLY

Entered service

Extension of leave effective

Remarks

COUNTY OF LOS ANGELES

DEPARTMENT OF CHARITIES

PERSONNEL DIVISION
ROOM 8080A ACUTE UNIT
LOS ANGELES COUNTY GENERAL HOSPITAL

TERMINATION OF EMPLOYMENT

NAME NELSON, Thomas L. EMPLOYEE NO. 60407 May 3, 1956
DEPT NO. 21-0 (64)

ADDRESS 1321 Atlantic Ave. Long Beach 13, Calif. DIVISION Med.Soc.Serv.

ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD SALARY	NET SALARY
5184A-4	Med.Soc.Worker, Perm.	34	417.	417.

WITHHOLDING TAX CODE 56-4

REASON Discharged.

RETIREMENT PERCENTAGE 7.78

EFFECTIVE DATE: May 2, 1956(12:noon)
Last day worked 5-2-56(4hrs.)
Eq.Vac. 5-2(4hrs.) to 5-15(7hrs.)
Leg.Vac. 5-16 to 5-21 and 5-15(1hr)

Allen Dibert
PERSONNEL MANAGER CHARITIES

CC-PAYROLL
SERVICE REPORT
FILE
DIVISION HEAD
EMPLOYEE
KEY CUSTODIAN
B.P.A.
ALL E CLAIMS

County of Los Angeles
Board of Supervisors
501 Hall of Records
Los Angeles 12
Michael 8211

RAY E. LEE
CHIEF CLERK OF THE BOARD

MEMBERS OF THE BOARD
HERBERT C. LEGG
CHAIRMAN
KENNETH HAHN
JOHN ANSON FORD
BURTON W. CHACE
ROGER W. JESSUP

TUESDAY, FEBRUARY 19, 1952.

The Board met in regular session. Present: Supervisors Roger W. Jessup, Chairman presiding, Herbert C. Legg, Leonard J. Roach, Raymond V. Darby; and Harold J. Ostly, Clerk, by Ray E. Lee, Deputy Clerk. Absent: Supervisor John Anson Ford.

* * * * * *

(Minute Book No. 3794, Page 237)

50
IN RE POSSIBLE APPEARANCE OF CERTAIN COUNTY EMPLOYEES BEFORE THE UNITED STATES CONGRESSIONAL HOUSE UN-AMERICAN ACTIVITIES COMMITTEE; ORDER DECLARING AND SETTING FORTH DUTIES AS RECOMMENDED BY THE LOYALTY OATH COMMITTEE.

A communication signed by Arthur J. Will, Chief Administrative Officer, E. W. Biscailuz, Sheriff, Clifford E. Anderson, Secretary and Chief Examiner, Civil Service Commission and Harold W. Kennedy, County Counsel, comprising the Loyalty Oath Committee, dated January 31, 1952, relating to the possibility that the United States Congressional House Un-American Activities Committee may be soon in Los Angeles in the near future and will at that time subpoena as many County employees to appear before it, - is presented; and on motion of Supervisor Darby, unanimously carried, and in accordance with recommendations contained in said report, it is hereby declared to be the duty of any employee of the County of Los Angeles who may be subpoenaed by the United States Congressional House Un-American Activities Committee to appear before it and to specifically answer questions propounded by the Committee relating to:

1. Present personal advocacy by the employee of the forceful overthrow of the government of the United States or of any state or political subdivision.

2. Present membership in any organization now advocating the forceful overthrow of the government of the United States or of any state or political subdivision.

3. Past membership in any organization which during the time of the employee's membership advocated the overthrow of the government of the United States or of any state or political subdivision.

4. Questions calling for answers based upon the personal knowledge of the employee of persons, places, and conversations, exclusive of conversations privileged under Section 1881, Code of Civil Procedure.

5. Questions as to membership in the Communist party.

This order does not apply to any question pertaining to any religious belief or membership in any religion or religious group or church.

It is further ordered that any said employee who disobeys the declaration of this duty and order will be considered to have been insubordinate as a Los Angeles County employee or a Los Angeles County district employee

and that such insubordination shall constitute grounds for discharge [illegible] at the department heads are instructed to notify any employee so [illegible] informed of the contents of this order and that said department heads [illegible] whether any violation of this order by employees under their [illegible] as insubordination, and the department heads are further instructed [illegible] suspend and discharge any employee violating this order.

[illegible] by the phrase "employees of the County of Los Angeles" [illegible] to all employees under the jurisdiction of the Board of Supervisors [illegible] its capacity as governing board of the County or any district.

I, HAROLD J. ORTH, County Clerk of the County of Los Angeles and ex officio Clerk of the Board of Supervisors of said County, do hereby certify that the foregoing is a full, true and correct copy of [illegible] minutes of the Board of Supervisors, as entered in Minute Book [illegible] [illegible] IN THE POSSIBLE APPREHENSION OF [illegible] [illegible] THE UNITED STATES [illegible] [illegible] AND SETTING FORTH [illegible] AS RECOMMENDED BY [illegible] [illegible] COMMITTEE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board of Supervisors, this 2nd day of April, 1950.

HAROLD J. ORTH, County Clerk and ex officio Clerk of the Board of Supervisors of the County of Los Angeles, State of California

By [signature] Deputy, Clerk

128 Before the Civil Service Commission of the County of Los Angeles

669479

IN THE MATTER OF THE DISCHARGE OF THOMAS W. NELSON, EMPLOYEE

v.

COUNTY OF LOS ANGELES

Findings

The above entitled matter having come on regularly for hearing before the Civil Service Commission of the County of Los Angeles on June 11, 1956, and stipulations having been entered into regarding the facts, and documentary evidence having been offered and received in evidence, and the Commission being fully advised in the premises, now finds:

1. That a letter of discharge dated May 2, 1956, was regularly served on said employee, Thomas W. Nelson, who requested a hearing, and the hearing was held on June 11, 1956.

2. That said employee, Thomas W. Nelson, was a permanent employee as a Medical Social Worker in the classified service of the County of Los Angeles on and prior to May 2, 1956.

3. On April 1, 1952, said employee, Thomas W. Nelson, signed the County loyalty oath and the State loyalty oath.

4. That on September 7, 1954 said employee, Thomas W. Nelson, answered "No" to question 15 "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Work Director.

129 5. That on April 4, 1956 said employee, Thomas W. Nelson, was personally served with a copy of an order adopted by the Board of Supervisors of the County of Los Angeles dated February 19, 1952 concerning possible appearance of certain employees before the U.S. Congressional House Un-American Activities Committee. That said order made it the duty of every employee to testify fully and completely when subpoenaed and requested to testify at such hearing; that refusal to do so constitutes insubordination and grounds for

discharge and instructed department heads to suspend and discharge any employee violating the order.

6. That said employee, Thomas W. Nelson, on April 20, 1956 appeared pursuant to subpoena at a hearing before the United States House of Representatives Committee on Un-American Activities and was sworn and asked a series of questions.

7. That while so testifying, said employee, Thomas W. Nelson, refused to answer each and every one of the following questions "on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution:"

"Mr. TAVENNER. Will you tell the committee, please, the reason for the termination of your services in Japan?" (p. 565, Exhibition 1, Tr. of hearing before the Committee on April 20, 1956.)

"Mr. TAVENNER. What was the date of the termination of your services in Japan?" (p. 565)

"Mr. TAVENNER. Very well then. Were you returned to the United States under the provisions of Public Law 808 from Japan as a security risk?" (pp. 566–67)

"Did you resort to that remedy provided by Public Law 808?" (p. 567)

"Mr. SCHERER. Why were you returned?" (p. 567)

130 "Mr. TAVENNER. Actually you did not appeal from the decision removing you, or take any steps to avoid it, did you?" (p. 568)

"Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan." (p. 568)

"Mr. TAVENNER. * * * Will you examine, please, the signature appearing at the bottom of the last page, and state whether or not it is your signature? * * * The question simply was whether or not the signature appearing at the end of the document is your signature." (p. 573)

"Mr. JACKSON. Mr. Nelson, I note this application also, on the last page, question no. 26:

"'Do you advocate or have you ever advocated or are you now or have you ever been a member of any organization that advocates the overthrow of the government of the United States by force or violence?' * * * Was that statement a

true statement at the time this application was executed?" (pp. 574–75)

"Mr. JACKSON. Now the Supreme Court and the Congress have defined a Communist Party as an organization which does, in fact, advocate the overthrow of the government by force and violence. Have you at any time been a member of the Communist Party?" (p. 575)

"Mr. TAVENNER. On the date indicated were you a member of the Communist Party?" (p. 576)

"Mr. TAVENNER. During the period 1945 to 1947 when you were serving the United States in Germany were you a member of the Communist Party?" (p. 577)

131 "Mr. TAVENNER. Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State Parole System of the State of California?" (p. 583)

"Mr. TAVENNER. Are you a member of the Communist Party——

"Mr. SCHERER. Pardon me just a minute.

"Did you ever tell your superior who commended you that you were a member of the Communist Party?" (p. 583)

"Mr. JACKSON. That is substantially it. I wanted to know whether or not you would make a statement today on an official form which was a requisite of employees that he was not a member of the Communist Party." (p. 585)

"Mr. JACKSON. Are you a member of the Communist Party?" (p. 586)

"Mr. JACKSON. I shall put a similar one.

"Are you a member of the Communist Party today?" (p. 586)

S. That any findings of fact inadvertently stated under the title of conclusions is true.

Conclusions

The Civil Service Commission of the County of Los Angeles therefore concludes that said employee, Thomas W. Nelson, was guilty of insubordination and guilty of violating Section 1028.1 of the Government Code of the State of California.

That any conclusions inadvertently stated as facts are hereby adopted as conclusions.

The Commission therefore concludes that the facts
132 and reasons justify the discharge of said employee, Thomas W. Nelson.

Dated this 9th day of August, 1956.

(S) HARRY ALBERT,
President.

(S) HAYDEN F. JONES,
Vice-President.

(S) WINSTON W. CROUCH.

133 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

Petition for writ of mandate

Filed November 9, 1956

[File endorsement omitted.]

The clerk is ordered to file this petition without prior service other than that which already may have been made.

JOHN J FORD,
Judge.

Nov. 9, 1956.

I

Petitioner is a resident of the County of Los Angeles, State of California, and a citizen of the United States. He was

employed by the County of Los Angeles, Department of Charities, on April 1, 1952, as a Social Worker; on June 16, 1953, he was appointed to the position of Medical Social Worker, permanent, in the classified service of the County of Los Angeles. Petitioner was so employed by Respondent County of Los Angeles until May 2, 1956, when petitioner was discharged; during all the period of employment petitioner performed the duties of his employment satisfactorily.

II

134 The respondent County of Los Angeles is a body corporate and politic, and a political subdivision of the State of California. The respondent Board of Supervisors is the governing agency of the County of Los Angeles; Burton W. Chace is, and at all times mentioned herein has been, a member of and chairman of said Board; and the respondents Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup are, as they have at all times herein been, members of said Board; the respondent Civil Service Commission of Los Angeles County is an agency of the County of Los Angeles with powers and duties as set forth in the Charter of the County of Los Angeles. Respondent Harry Albert is, and at all times mentioned herein, has been a member of and President of said Commission; and the respondents Hayden F. Jones and Winston W. Crouch are, as they have at all times herein been, members of said Commission.

III

On April 20, 1956, while petitioner was employed as a medical social worker, by the County of Los Angeles, as aforesaid, petitioner was served with a subpoena to appear before the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, on April 20, 1956; on said date, pursuant to said subpoena, petitioner did appear before said Committee and at said time and place was placed under oath and asked a series of questions by Committee Members and by Counsel for said Committee; the petitioner answered some of said questions, and with respect to others, pertaining to political opinion and association, including mem-

bership in the Communist Party, the petitioner refused to answer said questions, basing his refusal upon the guarantees of the First and Fifth Amendments to the Constitution of the United States.

IV

On May 2, 1956 the petitioner was discharged from his employment aforesaid by the County of Los Angeles; the
135 sole reason for his discharge, as aforesaid, was his assertion of rights guaranteed to him by the First and Fifth Amendments to the Constitution of the United States; and his refusal to answer the questions aforesaid, before said United States Congressional Committee, based upon said provisions in the Constitution of the United States.

Thereafter, and on July 20, 1956, the Civil Service Commission of Los Angeles County, respondent, ruled that said discharge as aforesaid was justified; said ruling was based solely upon the assertion of rights by the petitioner under the First and Fifth Amendments to the Constitution of the United States, and the refusal of the petitioner to answer the questions aforesaid, based upon said First and Fifth Amendments to said United States Constitution.

V

On April 1, 1952 petitioner signed a County loyalty oath and a State loyalty oath. On September 7, 1954 the petitioner answered "No", to question No. 15, on his application for the position of medical social worker, which question read "Are you now knowingly a member of the Communist party?"

VI

At no time, either prior to the questioning of the petitioner as aforesaid by said United States Congressional Committee, nor at any time thereafter, did any of the respondents make inquiry of the petitioner pertaining to his opinions, political or otherwise, or affiliations or membership, political or otherwise, except as set forth in Paragraph V hereinabove.

VII

The discharge of the petitioner, as aforesaid, was and is illegal and void, and abridges the constitutional rights of the petitioner as guaranteed to him by the Constitution of the United States and the Constitution of the State of California, in the following respects and particulars:

1. The discharge was and is arbitrary and unreasonable.

136 2. The discharge violates the rights of the petitioner under the Constitution of the United States, in that

a. With respect to the First and 14th Amendments to the Constitution of the United States, it abridges freedom of thought, freedom of speech and freedom of assembly as guaranteed by said First Amendment;

b. With respect to the Fifth Amendment, in that it abridges his right to be free from being a witness against himself;

c. With further respect to the 14th Amendment, it abridges his privileges and immunities as a citizen of the United States.

3. The discharge violates the rights of the petitioner under the Constitution of California, in that

a. It abridges his right to free speech, as guaranteed by Article I, Section 9, and his right to free assembly as guaranteed by Section 10 of said Article;

b. It violates his immunity from being a witness against himself as provided for by Article I, Section 13, of the California Constitution.

4. The questions propounded to him by said United States Congressional Committee, were not within the scope of any lawful authority of said Committee and were not pertinent to any lawful authority thereof.

VIII

Petitioner has suffered great and irreparable harm by being terminated from his employment and deprived of his means of livelihood in his specialized field of endeavor, and petitioner has no plain, speedy and adequate remedy at law, or otherwise than by this Petition for Writ of Mandate.

Wherefore petitioner prays:

1. A Writ of Mandate issue from this Honorable
137 Court directing respondent Civil Service Commission of Los Angeles County, and its President and members Harry Albert, Hayden F. Jones and Winston W. Crouch, respectively, to rescind the order terminating petitioner's employment; directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board respectively, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

2. That an Alternative Writ issue from this Honorable Court directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge; and directing said respondents Civil Service Commission of Los Angeles County, and its President and members, Harry Albert, Hayden F. Jones and Winston W. Crouch, respectively, to rescind the order terminating petitioner's employment, and ordering said respondents to show cause, at a time and place to be set by the Court, as to why a permanent writ of mandate should not issue directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge; and directing said respondents Civil Service Commission of Los Angeles County, and its President and members, Harry Albert, Hayden F. Jones and Winston W. Crouch, respectively, to re-
138 scind the order terminating petitioner's employment;

3. For costs of suit;

4. For such other and further relief as petitioner may be entitled to.

A. L. WIRIN,
WILLIAM T. PILLSBURY,
By A. L. Wirin,
A. L. WIRIN,
Attorneys for Petitioner.

(Verification.)

139 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

Alternative writ of mandate

Filed November 9, 1956

The People of the State of California to County of Los Angeles; Board of Supervisors, Los Angeles County, Burton W. Chace, Chairman Thereof, Herbert C. Legg, Kenneth Hahn, John Anson Ford, and Roger W. Jessup, Members Thereof; Civil Service Commission of Los Angeles County, Harry Albert, President Thereof, and Hayden F. Jones and Winston W. Crouch, Members Thereof, Respondents Above Named:

[File endorsement omitted.]

Whereas, it manifestly appears to us by the verified petition of Thomas W. Nelson, that notwithstanding there be no cause

for the discharge of petitioner as an employee of the
140 County of Los Angeles, the respondents have discharged said petitioner from his position, and that there is not a plain, speedy, or adequate remedy at law.

Therefore, we do command you, County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anso. Ford and Roger W. Jessup, Chairman and Members of said Board, respectively, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge; and

We Do Command You, Civil Service Commission of Los Angeles County, and its president and members, Harry Albert, Hayden F. Jones and Winston W. Crouch, respectively, to rescind the order terminating petitioner's employment,

Or That You Show Cause before this Court, the Superior Court of Los Angeles County, at Los Angeles, California in Department 34 thereof on the 23d day of November 1956, at the hour of 9:30 a.m., why you have not done so.

(SEAL) HAROLD J. OSTLY,
Clerk.
By J. E. ROSE,
Deputy.

Let the within writ issue.
Dated: November 9, 1956.

JOHN J. FORD,
JOHN J. FORD,
Judge, Superior Court.

141 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS; LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

Respondents return to the alternative writ of mandate; answer to the petition for said writ, and points and authorities

Filed November 29, 1956

[File endorsement omitted.]

Comes Now, the respondents above named and for their return to the Alternative Writ of Mandate issued herein answer the Petition for said Writ as follows:

I

Answering Paragraph I of said Petition, respondents deny that during all of the period of employment, petitioner performed the duties of his employment satisfactorily and in this connection allege that petitioner failed to perform the duties of his employment satisfactorily in that he failed and refused to answer certain questions propounded to him by counsel for and members of the Committee on Un-American Activities, of the House of Representatives of the United States Congress as requi[illegible] by law when testifying as a
142 witness under oath b[illegible]e said committee at a hearing held on April 20, 1956.

II

Answering Paragraph II of said Petition, respondents admit all of the allegations therein contained.

III

Answering Paragraph III of said Petition, respondents admit all of the allegations therein contained and in this connection allege that at said time and place petitioner refused to give direct and unequivocal answers to many questions propounded to him by counsel for and members of said committee. Respondents allege that petitioner refused to answer questions propounded by counsel for and members of said committee relating to his membership in organizations advocating the forceful or violent overthrow of the government of the United States and his present or past membership in the Communist Party; that he refused to cooperate with said committee in its investigation by his evasive replies to and refusal to answer questions propounded to him; that petitioner persistently attempted to hinder and thwart said committee in its investigation by his evasive replies to and refusal to answer many of the questions propounded to him by counsel for and members of said committee.

IV

Answering Paragraph IV of said Petition, respondents allege that on May 2, 1956, William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, discharged petitioner from his employment for his attitude and conduct before said committee and his refusal to answer the questions propounded to him by counsel for and members of the committee. That a copy of the Notice of Discharge, marked Exhibit "A" is attached hereto, made a part hereof and referred to herein. That on July 20, 1956, the Civil Service Commission of Los Angeles County held a hearing upon said discharge and found that the discharge of petitioner was justified.

143 V

Answering Paragraphs V and VI of said Petition, respondents admit all of the allegations therein contained.

VI

Answering Paragraphs V and VI of said Petition, respondall of the allegations therein contained and in this connection allege that the discharge of the petitioner was legal and was quired by the provisions of Section 1028.1 of the Government Code of the State of California.

VII

Answering Paragraph VIII of said Petition, respondents deny all of the allegations therein contained, except that respondents admit that petitioner has no plain or speedy remedy at law. Further answering said paragraph, respondents allege that if petitioner has suffered any harm, as alleged therein, it was not due to any act of the respondents, but due solely to the petitioner's conduct before said Committee on Un-American Activities and in direct violation of the laws of the State of California.

Wherefore, respondents pray that the Peremptory Writ of Mandate be denied and the Alternative Writ of Mandate discharged, and for their costs herein incurred.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel,
WM. E. LAMOREAUX,
Assistant County Counsel,
AND FRED R. METHENY,
Deputy County Counsel,
BY FRED R. METHENY,
Attorneys for Respondents.

(Points and authorities on file but omitted herefrom.)

144 *Exhibit A to respondent's return, etc.*

MAY 2, 1956.

Mr. THOMAS W. NELSON,
1321 Atlantic Avenue,
Long Beach 13, California.

DEAR SIR: You are hereby notified that, effective this date you are discharged from your position of Medical Social

Worker, Bureau of Medical Social Service, Department of Charities of the County of Los Angeles without further notice. This action is based upon the grounds that you have been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California which provides:

"It shall be the duty of any public employee who may be subpenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

145 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

The specific facts which are the basis for the above grounds of your discharge are that you were duly and regularly sub-

penaed to appear before the United States House of Representatives Committee on Un-American Activities, a duly authorized committee of the Congress of the United States; that on April 20, 1956, you did appear before said committee; that you were put under oath and were asked a series of questions by committee members and Counsel of said committee, which questions directly related to the above listed categories, including the following questions:

"Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan."

"Have you at any time been a member of the Communist Party?"

"Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State parole system for the State of California?"

"Are you a member of the Communist Party today?";

that you refused to answer under oath any and all of the above questions propounded to you by the Counsel of the United States House of Representatives Committee on Un-American Activities.

On April 4, 1956, you were personally served a copy of the Board Order of February 19, 1952, concerning the possible appearance of certain employees before the House Un-American Activities Committee. This Board Order related to your duty to testify as a County employee when appearing before said committee.

146 You may within ten days of service upon you of this letter file a written answer to these charges with this office sending a copy thereof to the County Civil Service Commission, 501 North Main Street, Los Angeles 12, California.

You may, if you so desire, within ten days of service upon you of this letter request a hearing on these charges before said Civil Service Commission.

Yours very truly,

(S) William A. Barr,
WILLIAM A. BARR,
Superintendent of Charities.

WAB:AK:ba.

cc: Civil Serv. Comm. (2), County Counsel (2), Payroll Division Head, Personnel Mgr., Char.

147 Proof of service (omitted in printing).

148 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

Memorandum for counsel

[File endorsement omitted.]

January 30, 1957

Since the above-entitled cases were argued and submitted together, one memorandum will be sufficient to indicate to counsel the basis of the determination of the court in each case.

In each of the cases before the court, the petitioner was discharged from county employment upon the ground that he had been guilty of insubordination and of violation of Section

1028.1 of the Government Code of the State of California inasmuch as he had refused to answer certain questions under oath as a witness before the United States House of
149 Representatives Committee on Un-American Activities. The record in each case discloses that such refusal was based upon a claim of privilege under the Fifth Amendment of the Constitution of the United States. The last paragraph of said Section 1028.1 provides:

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

The court has reached the conclusion that there were some questions asked of each witness, and as to which he claimed privilege under the Fifth Amendment, which related to subject-matter embraced within said Section 1028.1 (See Steinmetz v. California State Board of Education, 44 Cal. 2d 816). In this connection, it is interesting to note that in the opening brief of appellant Mass before the District Court of Appeal (1 Civil No. 16405), in the case discussed by counsel in memoranda filed herein and to which reference is hereinafter made, it is stated that the questions asked of Mass before a subcommittee of the House of Representatives Committee on Un-American Activities were:

"Have you been a member of the Communist Party since that date (19th of October, 1950)?"

"Are you a member of the party today?"

"Well, was the statement (Levering Act Oath) that you made under Oath true when you made it?"

Mass' counsel, on page 8 of that brief, states:

"At no time was the appellant asked about *knowing* membership in the Communist Party or whether he be-
150 longed to the Communist Party knowing that it advocated the overthrow of the government by force and violence."

It is to be noted that in the Mass case the Supreme Court apparently found no merit in any contention based upon the

wording of the questions asked. In the cases at bar, there is no merit in any similar contention.

In challenging the validity of his discharge, each petitioner relies on Slochower v. Board of Higher Education, 350 U.S. 551, decided in 1956. In the recent case of Board of Education v. Mass, 47 A.C. 501 (decided December 21, 1956), Mr. Chief Justice Gibson stated:

"We understand the holding of the Slochower case to be that a public employee may be dismissed for invoking the privilege against self-incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal."

With reference to Section 12604 of the Education Code which contains language substantially like that of said Section 1028.1, Mr. Chief Justice Gibson states:

"Any construction which would require us to hold that Section 12604 is unconstitutional should be avoided if possible (Bodinson Mfg. Co. v. California Emp. Com., 17 Cal. 2d 321, 326–327), and we are of the opinion that the statute may be reasonably interpreted in a manner consistent with due process. Section 12604, as we have seen, provides for the dismissal of an employee 'in the manner provided by law', and we construe these words to mean that, before an employee
151 may be found guilty of insubordination or dismissed for refusing to answer under the claim of privilege against self-incrimination, there must be a full hearing and a determination that his reasons for invoking the privilege are not sufficient. Factors of the type mentioned in the portion of the Slochower decision quoted above should, of course, govern the determination as to the sufficiency of the employee's reasons."

The factors to be considered may be gathered from the following excerpt from the Slochower case which discusses the deficiencies in the charter provision then before the court:

"No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege. It

matters not whether the plea resulted from mistake, inadvertence or legal advice conscientiously given whether wisely or unwisely. The heavy hand of the statute falls alike upon all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive."

Mr. Chief Justice Gibson points out that at the required hearing "any matter germane to the charges filed against him would be open to inquiry", as well as the sufficiency of the employee's reasons for invoking the privilege, all for the purpose of determining whether his dismissal is warranted.

Turning first to the Nelson case, the reporter's transcript discloses that at the hearing held pursuant to Mr. Nelson's request certain stipulations as to pertinent facts were
152 entered into by counsel. Thereafter, the chairman of the Civil Service Commission asked Mr. Nelson's counsel if there would be any witnesses (Transcript, page 8, line 26, to page 9, line 7). But no witness was offered and Mr. Nelson's counsel stated that he was ready to rest (Transcript, page 11, lines 18–19), after first having made the following statement (Transcript, page 11, lines 11–14):

"The employee does not care to offer any evidence or testimony at this time. He merely wishes to make a statement through counsel as to his position in regard to his discharge."

The statement thereafter made by counsel was essentially an attack upon the constitutionality of said Section 1028.1 of the Government Code as applied to Mr. Nelson.

It is clear, therefore, that Mr. Nelson was afforded the hearing which due process requires under the Slochower and Mass cases. There is no basis for setting aside his dismissal from County employment.

In the Globe case, Mr. Globe was afforded no hearing by the Civil Service Commission or by the respondents herein. The basis for such lack of hearing was that Mr. Globe was a temporary employee and that there was no provision for such hearing before the Civil Service Commission inasmuch as his employer could terminate his employment at will. However, it would seem that the termination of his status even as a temporary employee solely because of his use of a constitutional privilege and without affording him the type of hearing and

determination prescribed by the Slochower case would constitute an arbitrary discrimination which is prohibited (cf. Housing Authority v. Cordova, 130 Cal. App. 2d Supp. 883, 885).

It may be true that there is no express provision to
153 be found in any legislation relating to or enacted by the County of Los Angeles for the holding of a hearing before the Civil Service Commission in such a case. However, the respondents in this case would still be required under the language of Section 1028.1 of the Government Code to provide Mr. Globe an appropriate hearing if the words "in the manner provided by law" therein used have the meaning of the same words used in the statute involved in the Mass case, an interpretation which is reasonable and is consistent with the concept of due process.

A peremptory writ of mandate will be denied and the alternative writ discharged in the Nelson case. Counsel for respondents are requested to prepare findings of fact, conclusions of law and the form of judgment in accordance with the views herein expressed.

In the Globe case, a peremptory writ of mandate will issue, commanding respondents to grant the petitioner a full hearing with respect to the matter of his discharge for the purpose of making a determination as to whether his reasons for invoking the privilege under the Fifth Amendment are sufficient, at which hearing any matter germane to the charges against the petitioner will be open to inquiry. Counsel for petitioner are requested to prepare the findings of fact, conclusions of law and the form of judgment, together with the form of the writ, in accordance with the views herein expressed.

Dated this 30th day of January, 1957.

JOHN J. FORD,
Judge of the Superior Court.

154 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Findings of fact and conclusions of law

March 26, 1957

[File endorsement omitted.]

This proceeding came on regularly for trial on December 10, 1956, in Department 34 of the above entitled court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, William T. Pillsbury and Fred Okrand appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the court having considered the evidence and heard the arguments of counsel, and the matter having been submitted, now makes its Findings of Fact and Conclusions of Law as follows:

The Court finds:

I

It is true that from June 16, 1953, to May 2, 1956, petitioner was a permanent employee in the classified service of
155 the County of Los Angeles, and held the position of medical social worker.

II

It is true that on April 20, 1956, he testified under oath as a witness before the Committee on Un-American Activities

of the House of Representatives of the United States Congress at a hearing held by said Committee in the City of Los Angeles.

III

It is true that at said time and place petitioner refused to answer questions asked of him by members of said Committee relating to his knowing present and past knowing membership in the Communist Party since September 10, 1948.

IV

It is true that on May 2, 1956, William A. Barr, as Superintendent of Charities of the County of Los Angeles, notified petitioner in writing that he was discharged from his employment for his refusal to answer questions propounded to him by counsel for and members of said Committee.

V

It is true that on July 20, 1956, the Civil Service Commission of Los Angeles County, at the request of the petitioner, held a hearing upon his discharge and determined that the discharge of petitioner was justified.

VI

It is true that at said hearing petitioner failed to offer any evidence or testimony as to his reasons for refusing to answer questions at the hearing held by the House Un-American Activities Committee or to give explanation as to other matters germane thereto.

156 From the Aforesaid Findings of Fact the Court Concludes as a Matter of Law:

I

That Section 1028.1 of the Government Code of the State of California, relating to the obligation of a county employee to answer questions concerning membership in the Communist Party or be guilty of insubordination and therefore be suspended and dismissed from his employment in the manner

provided by law, is valid and constitutional as applied to the petitioner herein.

II

That the Committee on Un-American Activities of the House of Representatives, before whom petitioner appeared on April 20, 1956, in the City of Los Angeles, was a duly appointed, constituted and acting Committee of Congress authorized and empowered to conduct the investigation which was conducted at said time and place, and that said Committee had the power to ask the questions which it did ask or cause to be asked of the petitioner at that time.

III

That the petitioner violated Section 1028.1 of the Government Code of the State of California.

IV

That the petitioner was discharged in the manner prescribed by law, and that the Civil Service Commission of the County of Los Angeles gave him a full and fair hearing on his discharge, at which he had the opportunity to explain the reasons for his refusal to testify.

V

That sufficient grounds existed for the dismissal of the petitioner as a permanent employee of Los Angeles County.

VI

That the peremptory writ of mandate should be denied and the alternative writ discharged.

157 Let judgment be entered accordingly.

Dated March 26, 1957.

JOHN J. FORD,
Judge of the Superior Court.

158 In the Superior Court of the State of California

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Judgment

Dated March 26, 1957 and entered March 27, 1957

[File endorsement omitted.]

This proceeding having come on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, William T. Pillsbury and Fred Okrand appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of counsel, and the matter having been submitted, and the Court having made and filed its Findings of Fact and Conclusions of Law and having ordered judgment to be entered in accordance therewith,

Now, Therefore, It Is Hereby Ordered, Adjudged and
159 Decreed that the peremptory writ of mandate should be denied, the alternative writ discharged, and that the respondents did lawfully dismiss the petitioner as a permanent employee in the classified service of the County of Los Angeles.

Respondents are to be awarded costs in this proceeding in the amount of $6.50.

Dated this 26th day of March, 1957.

JOHN J. FORD,
Judge of the Superior Court.

160 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

Notice of entry of judgment

Filed April 1, 1957

To the Petitioner, Thomas W. Nelson, and to His Attorneys, A. L. Wirin and William T. Pillsbury:

[File endorsement omitted.]

[Title omitted.]

You Will Please Take Notice that on March 27, 1957, Judgment was entered in favor of the respondents herein and against the petitioner in Book 3264, page 206, including costs.

Dated: April 1, 1957.

HAROLD W. KENNEDY,
County Counsel,
WM. E. LAMOREAUX,
Assistant County Counsel and
FRED R. METHENY,
Deputy County Counsel,
By FRED R. METHENY,
Attorneys for Respondents.

161 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

Notice of appeal

Filed May 24, 1957

[File endorsement omitted.]

[Title omitted.]

To the Clerk of the Above-Entitled Court:

You will please take notice that the petitioner in the above-entitled action hereby appeals to the District Court of Appeal of the State of California, Second Appellate District, from the

judgment therein entered by the court in this action on the 27th day of March, 1957, in favor of the Respondents and against the Petitioner and from the whole thereof.

Dated this 23d day of May, 1957.

A. L. WIRIN,
FRED OKRAND,
WILLIAM T. PILLSBURY,
By William T. Pillsbury,
WILLIAM T. PILLSBURY,
Attorneys for Petitioner.

162 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

Petitioner's notice and request for clerk's transcript on appeal

Filed May 24, 1957

[File endorsement omitted.]
[Title omitted.]

To the Clerk of the Above Entitled Court:

Please take notice that the petitioner, Thomas W. Nelson, having filed a notice of appeal herein, does hereby request that the Clerk of the above entitled Court prepare a transcript of the following documents in accordance with the Rules on Appeal of the State of California in force and effect:

1. All Pleadings filed by Respondents and Petitioner.
2. The Judgment and Memorandum for Counsel.
3. Notice of Entry of Judgment.
4. Notice of Appeal, together with all exhibits either offered or admitted into evidence by the Respondents or the Petitioner.

Dated this 23d day of May, 1957.

A. L. WIRIN,
FRED OKRAND,
WILLIAM T. PILLSBURY.
By William T. Pillsbury,
WILLIAM T. PILLSBURY,
Attorneys for Petitioner.

163 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669479

Respondents' notice and request for additions to clerk's transcript on appeal

Filed June 3, 1957

[File endorsement omitted.]

[Title omitted.]

To the Clerk of the Above Entitled Court:

Please take notice that the respondents, County of Los Angeles, et al., having received notice of appeal herein, do hereby request that the Clerk of the above entitled Court add the following documents to the transcript on appeal:

1. Alternative Writ of Mandate herein; and
2. Findings of Fact and Conclusions of Law.

Dated: June 3, 1957.

HAROLD W. KENNEDY,
County Counsel,

And Fred R. Metheny,
FRED R. METHENY,
Deputy County Counsel,
Attorneys for Respondents.

164 [Clerk's certificates to foregoing transcript omitted in printing.]

165 In the District Court of Appeal of the State of California, Second Appellate District

2d Civil No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

2d Civil No. 22775

ARTHUR GLOBE, PETITIONER AND RESPONDENT

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS AND APPELLANTS

Application for leave to file memorandum on United States Supreme Court decisions decided subsequent to oral argument

July 21, 1958

Application is herewith made by Appellant Nelson in No. 22680 and by Respondent Globe in No. 22775 for leave to file the accompanying Memorandum discussing two cases (Lerner v. Casey, No. 165, Oct. Term 1957; 26 U.S. Law Week 4509 and Beilan v. Board of Public Education, No. 63, Oct. Term 1957; 26 U.S. Law Week 4512) decided by the United States Supreme Court on June 30, 1958, subsequent to the oral argument in these cases and subsequent to the filing of the Supplemental Brief by said parties.

166 It is the view of counsel for said parties that the two cases mentioned bear on the questions involved in the instant cases and that discussion of them can be of assistance to the court in arriving at its decision herein.

Dated: July 21, 1958.

Respectfully submitted.

A. L. WIRIN,
FRED OKRAND,
WILLIAM T. PILLSBURY,
Attorneys for Appellant Nelson and Respondent Globe.

167 *Memorandum*

Nelson and Globe have argued in a number of places (e.g. Nelson, Op. Br. p. 17; Reply Br. 8–11; Globe Br. pp. 6–7; Supplemental Br. on behalf of both, p. 5, as well as oral arguments) that there is a fundamental constitutional due process distinction between the discharge of a public employee for refusal to answer questions put to him by his employer having to do with fitness for employment and the discharge of the employee for refusal to answer questions on constitutional grounds before a Congressional Investigating

168 Committee, having nothing to do with fitness for employment. The latter is, of course, the instant cases and we have argued (e.g. Nelson Reply Br. p. 10) that where the discharge is under such circumstances, Slochower v. Board of Higher Education, 350 U.S. 551, teaches that the discharge is invalid under the due process clause.

This distinction has again been made and emphasized by the United States Supreme Court in its June 30, 1958 decision in Lerner v. Casey, No. 165, Oct. Term, 1957, 26 U.S. Law Week 4509, and Beilan v. Board of Public Education, No. 63, Oct. Term, 1957, 26 U.S. Law Week 4512.

In the Lerner case, the employee had refused to answer questions asked by his employer as to whether he was then a member of the Communist Party. For this refusal he was discharged. In sustaining the discharge the Supreme Court distinguished the situation in that case from that in Slochower (and, as we say, the situation in the case at bar). Thus the court said (26 Law Week at 4511):

"* * * (I)t seems clear that the discharge here in any event was unlike that in Slochower v. Board of Higher Education, * * * Further, in Slochower such a claim had been asserted in a federal inquiry having nothing to do with the qualifications of persons for state employment and the (New York) Court (of Appeals) in its opinion carefully dis-

169 tinguished that situation from one where, as here, a State is conducting an inquiry into fitness of its employees * * *"

Similarly, in Beilan the employee refused to answer questions of his employer and was discharged. In sustaining the discharge, the Supreme Court said (26 Law Week at 4514):

"Our recent decisions in Slochower v. Board of Education, 350 U.S. 551, and Konigsberg v. State Bar of California, 353 U.S. 252, are distinguishable. In each we envisioned and distinguished the situation now before us. In the Slochower case, at 558, the Court said:

"'It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at "the property, affairs, or government of the city, or * * * official conduct of city employees." In this respect the present case differs materially from Garner [314 U.S. 716], where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the Board had possessed the pertinent information for 12 years,
170 and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college functions. On such a record the Board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information.'"

It is thus evident that the discharge in the case at bar falls directly within the Slochower case, the meaning of which, if there were any doubt before, has been made crystal clear by the Supreme Court in the Lerner and Beilan cases.

CONCLUSION

The judgment in Nelson should be reversed and that in Globe affirmed.

Respectfully submitted.

A. L. WIRIN,
FRED OKRAND,
WILLIAM T. PILLSBURY,
Attorneys for Appellant Nelson and Respondent Globe.

171 In the District Court of Appeal of the State of California, Second Appellate District, Division One

Civ. No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, DEFENDANTS AND RESPONDENTS

Appeal from a judgment of the Superior Court of Los Angeles County. John J. Ford, Judge. Affirmed.

For Appellant: A. L. Wirin, Fred Okrand, William T. Pillsbury.

For Respondents: Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, Fred R. Metheny, Deputy County Counsel.

Opinion

Filed September 18, 1958

[File endorsement omitted.]

By stipulation this appeal was consolidated for oral argument with the companion case of Globe v. County of Los Angeles, Civil No. 22775, this day decided, involving
172 similar and related facts and questions of law.

On June 16, 1953, Thomas W. Nelson became a permanent civil service employee of the county of Los Angeles in the capacity of a medical social worker. On April 20, 1956, he was summoned to appear before a subcommittee on un-American activities of the United States House of Representatives and after being sworn refused to answer a series of questions pertaining to his political opinions, associations and knowing membership in the communist party. He based his

refusal on the First Amendment of the United States Constitution and on a claim of privilege against self-incrimination under the Fifth Amendment. Petitioner was discharged from county employment on May 2, 1956, on the ground that he had been guilty of insubordination and a violation of section 1028.1 of the Government Code. Thereafter, he appealed to the Civil Service Commission and was granted a hearing before that body. Pursuant thereto, he personally appeared before it on June 11, 1956. On August 9, 1956, the commission filed its findings and conclusions. It found that petitioner refused to answer certain questions under oath as a witness before the United States House of Representatives Committee on Un-American Activities and concluded that he was guilty of insubordination and a violation of section 1028.1 of the Government Code and subject to discharge from employment.

173 Petitioner filed a petition for writ of mandate in the superior court seeking reinstatement. The trial court found that at the hearing before the Civil Service Commission petitioner failed to offer any evidence as to his reasons for refusing to answer questions before the subcommittee, or to give explanation as to other matters germane thereto; and concluded that petitioner had been accorded a full and fair hearing on his discharge, at which he was given the opportunity to explain the reasons for his refusal to testify, and that he was discharged "in the manner provided by law." The petition for writ of mandate was denied and petitioner appeals from that judgment.

Unlike the companion case of Globe v. County of Los Angeles, Civil No. 22775, decided as of this date, petitioner herein, a permanent employee, upon his request, was accorded a hearing before the Civil Service Commission. In the opinion of the trial court, as of the reviewing court in the present appeal, appellant was afforded the opportunity for a full hearing which due process requires under the cases of Slochower v. Board of Ed. of N.Y., 350 U.S. 551, and Board of Education v. Mass, 47 Cal. 2d 494.

The record in the instant case discloses that at the hearing before the Civil Service Commission petitioner appeared with

counsel. The county of Los Angeles, after having
174 offered, by way of stipulation, certain facts concerning petitioner's employment with the county of Los Angeles, his appearance before the United States House of Representatives Committee on Un-American Activities, his failure to answer certain questions, and a transcript of the hearing before the committee covering the testimony of petitioner, rested its case. The chairman then suggested that all witnesses be sworn and asked, "Is anybody going to testify in this case?" to which the petitioner's counsel answered: "Perhaps Mr. Nelson will testify." Petitioner then offered his entire personnel file in evidence, together with a copy of the introductory statement made by Congressman Moulder as to the scope and purpose of the hearings before the House Committee on Un-American Activities. Before resting his case, counsel for petitioner stated, "The employee does not care to offer any evidence or testimony at this time. He merely wishes to make a statement through counsel as to his position in regard to his discharge." The chairman of the commission asked counsel if that meant he was ready to rest his case. Counsel answered in the affirmative and the chairman followed it up with the further question, "Now you just want to argue?" to which counsel replied, "That is all." The petitioner did not take the stand, offered no testimony and no witnesses. Counsel's argument was essentially an attack upon the constitutionality of section 1028.1 of the Government Code as applied to him.

175 Petitioner, although given a clear opportunity to do so, declined to testify at the hearing before the commission or offer any evidence concerning his reasons, if any, for refusing to testify before the House subcommittee or matters germane thereto.

Both parties rely upon Slochower v. Board of Ed. of N.Y., supra, 350 U.S. 551, and Board of Education v. Mass, supra, 47 Cal. 2d 494.

Any point raised by petitioner that the statutory requirements of section 1028.1 bar or prohibit his privilege of self-incrimination has heretofore been decided by the Supreme

Court in the case of Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816. The court said, at page 824: "Moreover, a person may properly be required to disclose information relevant to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure, under some circumstances, may amount to self-incrimination. (Citations.) A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment." A like holding is found in the case of Board of Education v. Mass, 47 Cal. 2d 494, relative to section 12604 of the Education Code, which contains substantially the same language found in section 1028.1, here under consideration. At page 498,
176 the court stated: "A teacher may properly be required to disclose information relative to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure under some circumstances may amount to self-incrimination. (See Steinmetz v. California State Board of Education, 44 Cal. 2d 816, 824 [285 P. 2d 617]; Pockman v. Leonard, 39 Cal. 2d 676, 687 [249 P. 2d 267]; Christal v. Police Com., 33 Cal. App. 2d 564, 567 et seq. [92 P. 2d 416].)"

Although the Supreme Court has previously held that under section 1028.1 of the Government Code and similar legislation providing for the dismissal of a public employee who fails or refuses to answer questions propounded by a legislative committee relating to past or present membership in the Communist party, an employee shall be deemed guilty of insubordination and dismissed in a manner provided by law (Board of Education v. Mass, 47 Cal. 2d 494; Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816; Adler v. Board of Education, 342 U.S. 485), petitioner herein urges that section 1028.1 of the Government Code is unconstitutional as applied to him. He argues that to have explained his reasons for invoking the privilege at the hearing before the commission would have been meaningless under the statute because it

flatly provides that any employee who refuses to answer
177 on any ground whatsoever shall be guilty of insubordination and a violation of the section and shall be dismissed "in the manner provided by law."

The California Supreme Court does not accept this strict interpretation. (Board of Education v. Mass, 47 Cal. 2d 494.) It recognizes a discretion on the part of the employer which may be exercised if it deems the employee's reasons for refusing to answer sufficient. In discussing Slochower v. Board of Ed. of N.Y., 350 U.S. 551, holding that summary dismissal violated the constitutional requirements of due process because no consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege or whether the plea resulted from mistake, inadvertence, or legal advice conscientiously given, either wisely or unwisely, our Supreme Court in the Mass case made it clear that it understood that the Slochower case held that a public employee may be dismissed for invoking the privilege against self-incrimination only if "after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal." (page 499.) A full hearing under section 1028.1 of the Government Code is guaranteed to a public employee by
178 the use of the language "in the manner provided by law." The court in the Mass case so interpreted this language, and at page 499 stated: "Section 12604, as we have seen, provides for the dismissal of an employee 'in the manner provided by law,' and we construe these words to mean that, before an employee may be found guilty of insubordination or dismissed for refusing to answer under the claim of privilege against self-incrimination, there must be a full hearing and a determination that his reasons for invoking the privilege are not sufficient. Factors of the type mentioned in the Slochower decision should, of course, govern the determination as to the sufficiency of the employee's reasons." For what purpose would the Supreme Court insist on a full hearing to give the employee an opportunity to explain his reasons if

the statute required a dismissal regardless of his explanation for refusing to answer?

If the scope of inquiry in the instant case was limited to a determination of whether he refused to answer the questions put to him by the committee, petitioner himself limited it. He was given the type of full hearing contemplated by the Slochower and Mass cases and section 1028.1 of the Government Code. Petitioner elected to remain silent.

Appellant argues that section 1028.1 of the Government Code, in its terms, by the use of the language:
179 "on any ground whatsoever" does not permit a reason or justification for a refusal to answer questions, and that it requires a dismissal if petitioner refuses to answer on any ground whatsoever. Counsel confuses the ground upon which petitioner refused to testify, in effect the basis of his refusal, with the reason why he refused to answer on that ground. Our Supreme Court has held that the terms of the statute do permit a reason or justification for refusing to answer and require a hearing for the purpose of permitting the employee to give it, and a determination of the employer that he was or was not justified.

Any argument that the county should have questioned petitioner about his reasons for invoking the privilege is specious. The record discloses that he was given every opportunity to explain if he wished to do so and "an opportunity to explain" does not imply that the county must elicit the information from the employee. Whether his explanation comes through query of the employer or the employee's own counsel would seem immaterial as long as the employee is given a full hearing in which he is afforded an opportunity to explain his reasons. The hearing is for the purpose of giving him the opportunity to explain. If he chooses to remain silent and not do so he cannot now be heard to say he has been denied due process. If petitioner's hearing was limited in any way, it was limited by his own voluntary choice to remain silent. It is clear
180 that petitioner was afforded the hearing which due process requires under the pronouncements of the United States and California Supreme Courts in the Slochower and Mass cases and there is no basis for setting aside his dismissal.

As to whether the congressional committee was a duly authorized committee, petitioner cites Watkins v. United States, 354 U.S. 178, claiming that the authorizing resolution in the instant case was too broad in its terminology empowering the committee to investigate un-American and subversive activities. Although the court in the Watkins case commented upon the indefinite nature of the authorization it did not hold it unconstitutional. In any event the factual situation in the Watkins case and in the one at bar are not similar, for in the Watkins case appellant was prosecuted for contempt after refusing to answer certain questions as to past communist party membership of other persons. Watkins had offered to answer such questions pertaining to himself. In the present situation there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee. Petitioner was asked directly in regard to his own communistic activities and refused to answer such inquiries.

181 Petitioner contends that he was discharged for invoking the privilege and that the implication of guilt it carries was responsible for his dismissal. As a matter of fact, petitioner was discharged because he "was guilty of insubordination and guilty of violating section 1028.1 of the Government Code of the State of California." Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here. The statute heretofore held constitutional defines the refusal to answer as "insubordination," which authorizes a dismissal in the manner provided by law. It has been long established by the United States Supreme Court and the California Supreme Court that there is a correlation between loyalty and fitness and public employment. In Board of Education v. Mass, supra, at page 498, the court stated: "Loyalty on the part of public employees is essential to orderly and dependable government and is therefore relative to fitness for such employment." (Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816; Pockman v. Leonard, 39 Cal. 2d 676; Christal v. Police Commission, 33 Cal. App. 2d 565.) Section 1028.1 of the Government Code demands disclosure of information relative to such fitness as a reasonable condition for

retaining employment even though the disclosure may constitute self-incrimination in some cases. It is clear that both insubordination and disloyalty are factors of fitness.

182 The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation. There appears in the record ample evidence of unfitness for county employment and a legal basis for discharge.

LILLIE, J.

The judgment is affirmed.

We concur:

WHITE, P. J.

FOURT, J.

183 [Clerk's Certificate to foregoing transcript omitted in printing.]

184 In the Supreme Court of the State of California

2d Civil No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD, AND ROGER W. JESSUP, MEMBERS THEREOF, CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

Appellant's petition for hearing

To the Chief Justice and the Associate Justices of the California Supreme Court:

Petitioner and Appellant respectfully petitions that this cause be heard and determined by the Supreme Court for the following reasons:

185 1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution are presented which require consideration by this Court to the end that there be a uniformity of decision and a

settlement of the uncertainty regarding this vital aspect of Constitutional law.

2. The decision heretofore announced by this Court in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under Government Code § 1028.1. That question should be decided in this case.

3. The constitutional issue presented in this case is an important one that is constantly recurring, can be expected to recur in the future and should be given a definitive ruling by this Court.[1]

This petition proffers only questions of law. The decision of the District Court of Appeal can only be an erroneous guide to trial courts if permitted to become final.

186

I. Question Presented

Is a county permanent civil service employee denied due process of law by reason of his discharge, as "insubordinate", solely and only because of his refusal, on proper constitutional ground; to answer questions before a Federal Congressional Committee having nothing to do with qualifications and fitness for employment?

II. Procedural Statement of the Case

This is a petition for a hearing by this Court of the above entitled cause which is an appeal from a judgment denying a petition for a writ of mandate to reinstate petitioner to county employment.[2]

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[1] The companion case in the court below (Globe v. County of Los Angeles, 2d Civil No. 22775, 163 ACA 668, Petition for Hearing in which is being filed concurrently herewith) and Callender v. County of San Diego, 161 ACA 529, demonstrate that the issue is not that of petitioner's alone. In the Callender case, this court denied a hearing, but it is reasonable to assume that the reason therefor was the presence of the laches issue in that case which was the sole basis for the District Court of Appeal's decision (161 ACA at 532). The issue in the instant case has never been determined by this Court.

[2] The record, exclusive of exhibits, is in two parts:

The Clerk's transcript (C.T.) and the Transcript of the Respondent Civil Service Commission (TR-CSC); the exhibits, pursuant to Rule 10, were transmitted to the Court below. Petitioner's entire personnel file was filed as an exhibit and the respective portions thereof have been designated in the exhibit by markings which correspond to references thereto contained in Appellant's opening brief.

Petitioner, a permanent Civil Service employee, was discharged on May 2, 1956 (C.T. 16). Subsequent to petitioner's discharge he appeared before the Civil Service Commission of Los Angeles County on June 11, 1956, and on August
187 9, 1956, a Civil Service Commission of Los Angeles County filed findings and conclusions that appellant was guilty of insubordination and guilty of violation of Section 1028.1 of the Government Code of the State of California and that petitioner's discharge was justified under the provisions of said Statute. (C.T.3, 10, 11).

Appellant thereafter filed on November 9, 1956, a petition for writ of mandate in the Superior Court of the County of Los Angeles and judgment for respondent was entered on March 27, 1957 (C.T. 20). The trial Court entered a written opinion (C.T. 26) denying Petitioner's writ of mandate.

The District Court of Appeal, Second Appellate District, affirmed the trial Court's denial of the writ. The decision of the District Court of Appeal was filed on September 18, 1958. A copy of the opinion of that Court is attached hereto as Appendix "A". The opinion now appears at 163 ACA 679.

STATEMENT OF THE FACTS

There is no dispute as to the facts. No charge or allegation was made that petitioner's work was unsatisfactory.

On April 20, 1956, petitioner was served with a subpoena to appear before the Committee on Un-American Activities of the U.S. House of Representatives. Having been sworn as a witness, petitioner refused to answer a series of questions pertaining to his political opinion, associations, and alleged membership in the Communist Party (C.T. 17).
188 Petitioner refused to answer said questions, basing his refusal on the guarantees of the First and Fifth Amendments to the Constitution of the United States (C.T. 2).[3]

[3] The records of Los Angeles County contained in petitioner's personnel file indicate that on April 1, 1952, petitioner signed a County Loyalty Oath and that on said Loyalty Oath on September 7, 1954, the petitioner answered "No" to Question 15 on his application for the position of Medical Social Worker, which question read: "Are you now knowingly a member of the Communist Party?" (C.T. 3, 11).

As aforesaid petitioner appealed to respondent Civil Service Commission and at said hearing substantially the same facts as herein set out were stipulated to (Tr–C.S.C. 8—Exh. 3).

At said hearing respondents did not question petitioner nor make any inquiry whatsoever as to petitioner's opinions, political affiliations, membership, political or otherwise.

At no time has petitioner been asked by the County of Los Angeles Civil Service Commission, or any of the respondents, any of the questions or matters set forth in Government Code 1028.1.

III. Statute Involved

The Statute herein involved is Section 1028.1 of the Government Code of the State of California (Tr. 12, 13) (Set forth in full hereinafter as Appendix "B").

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ARGUMENT

I. Petitioner's Discharge Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 13 of the California Constitution; the Judgment Upholding the Discharge Is Contrary to Slochower v. Board of Education, 350 U.S. 551 and Board of Education v. Mass 47 Cal. 2d 494

It is perfectly plain that petitioner was discharged solely and only because he refused to answer questions before a Congressional Committee, and that such questions had nothing to do with his fitness or qualifications for employment. Petitioner was not discharged for refusal to answer questions put to him by his employer; his employer asked him not a single question (C.T. 3, 11). The meaning of the Slochower decision showing that there is a fundamental constitutional due process distinction between the discharge of a public employee for refusal to answer questions put to him by his employer, having to do with fitness for employment, as distinguished from the discharge of the employee for refusal to answer questions on Constitutional grounds before a Congressional Investigating Committee having nothing to do with fitness for employment, is pointed out in petitioner's opening (pp. 13-18) and reply

(pp. 8–11) briefs. The argument is not repeated here but the Court's attention is respectfully invited thereto.

The recent decisions by the United States Supreme Court in Lerner v. Casey, —— U.S. ——; 78 S. Ct. 1311, and
190 Beilan v. Board of Education, —— U.S. ——; 78 S. Ct. 1317[*] make it even more clear than before that the discharge sustained below violates due process of law and is contrary to the Slochower case.

In the Lerner case, the employee had refused to answer questions asked by his employer as to whether he was then a member of the Communist Party. For this refusal he was discharged. In sustaining the discharge the Supreme Court distinguished the situation in that case from that in Slochower (and, as we say, the situation in the case at bar). Thus the Court said (78 S. Ct. at 1316):

"* * * (I)t seems clear that the discharge here in any event was unlike that in Slochower v. Board of Higher Education, * * * Further, in Slochower such a claim had been asserted in a federal inquiry having nothing to do with the qualifications of persons for state employment and the (New York) Court (of Appeals) in its opinion carefully distinguished that situation from the one where, as here, a State is conducting an inquiry into fitness of its employees * * *"

Similarly, in Beilan the employee refused to answer
191 questions of his employer and was discharged. In sustaining the discharge, the Supreme Court said (78 S. Ct. at 1323):

"Our recent decisions in Slochower v. Board of Education, 350 U.S. 551 and Konigsberg v. State Bar of California, 353 U.S. 252, are distinguishable. In each we envisioned and distinguished the situation before us. In the Slochower case, at 558, the Court said:

"'It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at

[*] These cases were decided subsequent to oral argument in the Court below and were referred to in a memorandum brief filed subsequent to oral argument in the Court below.

"the property, affairs, or government of the city, or * * * official conduct of city employees." In this respect the present case differs materially from Garner (314 U.S. 716), where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the Board has possessed the pertinent information for twelve years,[5]
192 and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college functions. On such a record the Board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information.'"

It is thus evident that the discharge in the case at bar falls directly within the Slochower case, the meaning of which, if there were any doubt before, has been made crystal clear by the Supreme Court in the Lerner and Beilan cases.

Moreover, the emphasis by the United States Supreme Court on the distinction strongly suggests the appropriateness of this Court granting a hearing here to further consider the question in the light of this Court's decision in the Mass case. In the Mass case this Court reversed and remanded a lower Court decision which had sustained a discharge for refusal to answer questions before the same Congressional Committee involved in this case. The reason given by this Court was its understanding of the Slochower decision as requiring a meaningful hearing at which the reason for the employee's refusal to answer questions before the Congressional Committee is given consideration and found wanting before a discharge can be sustained.[6]
193 That the Slochower decision holds at least that, is clear. And that the instant case falls within this principle and within the Mass case is likewise clear. But, as the

[5] The same factual situation is present here. (Record of Interview of Mr. Nelson by Dorothy White, dated April 1, 1952; application of Mr. Nelson dated April 1, 1953; application of Mr. Nelson dated September 6, 1954; lettergram dated January 11, 1956, all in petitioner's personnel file.)

[6] This Court's language was (47 Cal. 2d at 499): "We understand the holding of the Slochower case to be that a public employee may be dismissed for invoking the privilege against self-incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, *it is determined* that his refusal to answer is sufficient under the circumstances to warrant dismissal." (Italics added.)

Lerner and Beilan decisions show, Slochower holds much more than that. The discharge must have to do with fitness for employment. And when the discharge is simply for refusal to answer questions before a Congressional Committee, having nothing to do with fitness for employment, due process and Slochower are violated.

This Court should grant a hearing to dispel the erroneous impression given by Mass that the California law is more narrow than the United States Supreme Court has said due process requires.

II. The Hearing Afforded Petitioner Was Exactly That Type of Hearing Proscribed in Slochower and Mass

There is no question that the sole reason for respondent's discharge was his refusal to answer questions before the Federal Committee (Exhibit "A"; C.T. 12, 13, 14). The findings and conclusions of the Civil Service Commission were to the same effect. (Ibid).

It is submitted that this is precisely the same position taken by the New York City Board of Education in the New
194 York Courts in Slochower, (namely, that the duty to answer was a condition of public employment, the failure of which was ground for discharge). With this position the Supreme Courts both in Slochower and Mass do not concur.

The applicability of Slochower and Mass is particularly pointed up by the fact that on April 1, 1952, petitioner had signed the County and State loyalty oaths and that on September 7, 1954, he answered "No" to Question 15, "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Worker Director (Findings 3 and 4; C.T. 3, 11).

Yet, despite the signing of these loyalty oaths and the "No" answer to the question of Communist Party membership, respondents made no inquiry thereinto. Instead, as in Slochower and Mass, they seized upon the refusal to answer, upon the claim of privilege, before the federal committee and by virtue of Government Code 1028.1, turned such refusal into a conclusive presumption of guilt and discharged the petitioner.

The Court below, in answering this argument, and in fact

determining the entire case, concludes that the appellant herein was afforded the full hearing which due process requires under the cases of Slochower and Mass (Appendix "A"; 163 A.C.A. at 684). This in the face of respondents' position (C.T. 11) that the discharge was required by Government Code 1028.1 and in the face of the fact that there was no "determination" (see footnote 6, supra) as required by this Court's decision in Mass. The arguments as to the type of hearing afforded petitioner and the type of hearing required by Slochower and Mass is pointed out in petitioner's opening brief (pages 8–10) and petitioner's reply brief (pages 5–8). The argument is not repeated here but the Court's attention is respectfully invited thereto. And compare Konigsberg v. State Bar of California, 353 U.S. 252, holding that denial of admission to the Bar on grounds of failure to establish good moral character because of refusal to answer questions similar to those here, put by the Committee of Bar Examiners, was a denial of due process. This court has granted a hearing in that case after the remand. (L.A. No. 23266.)

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III. Petitioner Was in Reality Discharged for His Refusal To Answer Questions Before a Congressional Committee, Where Petitioner Asserted the Privilege Against Self-Incrimination Under the Fifth Amendment

The record (Exhibit "A", C.T. 12, 13, 14) clearly shows that petitioner was specifically discharged for "insubordination" under Government Code § 1028.1. Further, that the purported "insubordination" was predicated upon petitioner's refusal, on constitutional grounds, to answer questions propounded by a Congressional Investigative Committee. The fact that petitioner was given a "hearing" by his employer in which nothing mattered, save whether there was refusal to answer questions before the legislative committee does not satisfy the interdict of Slochower; does not afford the individual "protection * * * against arbitrary action." 350 U.S. 559. This, because the same lack of due process resulted as in Slochower, has occurred: petitioner was

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discharged solely and only because of his refusal, upon a proper claim of privilege, to answer questions before a Federal Committee having nothing to do with qualifications and fitness for employment. "In practical effect the questions asked are taken as confessed and made the basis of discharge." Slochower, 350 U.S. at 558.

The Court below, in replying to petitioner's contention, states (Appendix "A"; 163 A.C.A. at 686):

"Petitioner contends that he was discharged for invoking the privilege and that the implication of guilt it carries was responsible for his dismissal. As a matter of fact, petitioner was discharged because he 'was guilty of insubordination and guilty of violating Section 1028.1 of the Government Code of California'. Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here. The statute heretofore held constitutional defines the refusal to answer as 'insubordination', which authorizes a dismissal in the manner provided by law. It has long been established by the United States Supreme Court and the California Supreme Court that there is a correlation between loyalty and fitness and public employment. In Board of Education v. Mass, supra, at page 498, the court stated: 'Loyalty on the part of public employees is essential to orderly and dependable government and is therefore relative to fitness for such employment.' (Siemmetz v. Cal. Board of Education, 44 Cal. 2d 816; Peckman v. Leonard, 39 Cal. 2d 676; Christal v. Police Commission, 33 Cal. App. 2d 565). Section 1028.1 of the Government Code demands disclosure of information relative to such fitness as a reasonable condition for retaining employment even though the disclosure may constitute self-incrimination in some cases. It is clear that both insubordination and disloyalty are factors of fitness. 'The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation.' * * *"

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[1] This same argument of "lack of cooperation" was strongly urged in the Slochower case (Brief of Appellee, pp. 12 and 32) and, as seen, rejected by the United States Supreme Court.

It is apparent therefore that the Court below has equated "loyalty" with "lack of cooperation" with a Congres-
198 sional Committee and that it has equated both with "insubordination" to the employer in order to achieve a connection regarding fitness. While the Court below speaks of the unquestioned basis of dismissal as being insubordination, the Court's references to loyalty further require this Court to grant a hearing in order to clarify the constitutionality of a statute that determines "insubordination" upon a finding of fact that a public employee exercised a Constitutional right in refusing to answer questions before a Congressional Committee.

IV. A Requirement That a Public Employee Discharged for the Exercise of a Constitutional Right Has the Burden of Proof That He Should Not Be Discharged Is a Violation of Due Process

Respondents and the Court below (Appendix "A"; 163 A.C.A. at 685) take the position that the burden was upon petitioner to prove that he should not be discharged for exercising a Constitutional right to questions placed to him by a Federal Congressional Committee.[3] The recent United States Supreme Court decisions in Speiser v. Randall, 78 S. Ct. 1332, —— U.S. ——; and First Unitarian Church v. County of Los
199 Angeles, 78 S. Ct. 1350, —— U.S. ——, teach that this inverts the order of things. When the State seeks to visit debilities upon one for the exercise of a Constitutional right, the State must come forward "with sufficient proof and justify [the] inhibition" (78 S. Ct. 1332 at page 1343). In insisting that the employee come forward, respondents, as in the Speiser and First Unitarian Church cases, deny due process.

V. Petitioner Did Not Violate Government Code 1028.1 Because the Committee Was Not a "Duly Authorized Committee of the Congress"

Government Code 1028.1 requires that the Congressional Committee be a "duly authorized committee of the Congress."

[3] The court below characterized the argument that respondents have the burden of proof as "specious." (163 A.C.A. at 685).

It is submitted that the House Committee on Un-American Activities before which the county employee here involved was summoned was not such a committee because its charter is unconstitutional within the free speech clause of the First Amendment and the due process clause of the Fifth Amendment to the United States Constitution.

The authority of the Committee as set out by the House of Representatives Resolution is set out in the margin.[9]

200 In Watkins v. United States, 354 U.S. 179, 201, the Supreme Court said that "the authorizing resolution * * * is the committee's charter." In discussing the validity of this charter, the Court said (354 U.S. at 202, 203, 204):

"It would be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of 'un-American'? What is that single, solitary 'principle of the form of government as guaranteed by our Constitution?' There is no need to dwell upon the language, however. At one time, perhaps, the resolution might have been read narrowly to confine the Committee to the subject of propaganda. The events that have transpired in the fifteen years before the interrogation of petitioner make such a construction impossible at this date.

"The members of the Committee have clearly demonstrated that they did not feel themselves restricted in any way to propaganda in the nar[*]row sense of the word. Unquestionably the Committee conceived of its task in the grand view of its name. Un-American activities were its target, no matter how or where manifested * * *

201 "Combining the language of the resolution with the construction it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. No one could

[9] H. Res. 5, 83d Cong., 1st Sess. (99 Cong. Rec. 18, 24):

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

reasonably deduce from the charter the kind of investigation that the Committee was directed to make * * *"

While it is true that in the Watkins case the Supreme Court did not, in so many words, hold the Charter of the Committee unconstitutional,[10] it is submitted that the reasoning of the Court and its language are persuasive authority to the effect that the Charter contains within itself the "vice of vagueness" [11] and is therefore unconstitutional because too broad and too vague under the Fifth Amendment.[12] It being the fact that propaganda (First Amendment freedoms) is the subject of the Committee's Charter, the vagueness thereof renders the Charter likewise defective under the First Amendment.[13]

202. Accordingly, there was no authority under Government Code 1028.1 for respondents to discharge petitioner. In any event, the question is so substantial as to warrant hearing by this Court.

CONCLUSION

The Petition for Hearing should be granted.

Respectfully submitted.

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Attorneys for Petitioner and Appellant.

203. CLERK'S NOTE

Appendix "A" to Appellant's petition for hearing—Opinion, Lillie, J. in the case of Nelson v. County of Los Angeles, No. 22680 omitted. Printed side page 171 ante.

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[10] It went on to hold that the pertinency to any legislative purpose of the particular questions asked the defendant in that contempt case did not appear.

[11] The court cited (354 U.S. at 200) United States v. Josephson, 165 Fed. 2d 82, 88 (CA 2, 1947).

[12] Cf. United States v. Harriss, 347 U.S. 612, United States v. Cardiff, 344 U.S. 174; Winters v. New York, 333 U.S. 507, Musser v. Utah, 333 U.S. 95; Lanzetta v. New Jersey, 306 U.S. 451.

[13] Hague v. CIO, 307 U.S. 496; Winters v. New York, 333 U.S. 507; Saia v. New York, 334 U.S. 558; Staub v. City of Baxley, 355 U.S. 313, 2 L. ed. 2d 302.

Appendix "B" to Appellant's petition for hearing—State of California Statutes, Section 1028.1 of the Government Code omitted. Printed side page 304 supra.

204 In the Supreme Court of the State of California

2d Civil No. 22680

Answer to petition for hearing

November 5, 1958

[Title omitted.]

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Thomas W. Nelson, the plaintiff and appellant, has filed his petition for hearing before this Honorable Court. The petition is based upon the following grounds:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution, are presented.

2. The decision in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of
205 law under Government Code Section 1028.1.

3. The constitutional issue presented is an important one that can be expected to recur in the future.

The gist of the petition is, of course, that the opinion of the District Court of Appeal is erroneous. The defendants and respondents submit that the opinion of the District Court of Appeal is correct, that it properly and adequately disposed of all legal arguments advanced by the petitioner therein and herein, and that there is no merit to any of the grounds stated in the Petition for Hearing.

STATEMENT OF THE CASE

The opinion of the District Court of Appeal (Petition for Hearing, appendix A; 163 A.C.A. 679) accurately and completely sets forth the facts pertinent to the issue. Of particular importance is the fact the petitioner was given a hearing during

the course of which he was given the opportunity to explain his conduct. The question presented is whether petitioner was accorded due process of law prior to his dismissal as required by the Fourteenth Amendment to the United States Constitution and Article I, Section 13 of the California Constitution.

206 POINT I. THE HEARING BEFORE THE CIVIL SERVICE COMMISSION, IN FACT, AN INQUIRY "IN THE MANNER PROVIDED BY LAW" REGARDING PETITIONER'S FITNESS AND QUALIFICATION FOR PUBLIC EMPLOYMENT, FALLING WITHIN THE FRAMEWORK OF SLOCHOWER V. BOARD OF HIGHER EDUCATION, 350 U.S. 551, AND BOARD OF EDUCATION V. MASS, 47 CAL. 2D 494

1. A hearing called by an employer can, without violating due process, go into matters which occurred prior to the hearing as a basis for determination of fitness for holding public employment.

As announced by this Court in Board of Education v. Mass, 47 Cal. 2d 494, Slochower teaches that a public employee may be dismissed for invoking the Fifth Amendment privilege only if, after a full hearing on the matter, wherein he was given an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient to warrant dismissal.

Petitioner would add a corollary lesson—if the refusals to answer were predicated on questions put to him by others than his employer and such questions, of themselves, were not directed to fitness for public employment, a discharge——

207 "IN THE MANNER PROVIDED BY LAW" REGARDING PETITIONER'S FITNESS AND QUALIFICATION FOR PUBLIC EMPLOYMENT, FALLING WITHIN THE FRAMEWORK OF SLOCHOWER V. BOARD OF HIGHER EDUCATION, 350 U.S. 551, AND BOARD OF EDUCATION V. MAAS, 47 Cal 2d 494.

1. A hearing called by an employer can, without violating due process, go into matters which occurred prior to the hearing as a basis for determination of fitness for holding public employment.

As announced by this Court in Board of Education v. Mass, 47 Cal. 2d 494, Slochower teaches that a public employee may be dismissed for invoking the Fifth Amendment privilege only if, after a full hearing on the matter, wherein he was given an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient to warrant dismissal.

Petitioner would add a corollary lesson—if the refusals to answer were predicated on questions put to him by others than his employer and such questions, of themselves, were not directed to fitness for public employment, a
208 discharge based on such refusals violates due process.

Not so.

It must first be remembered that it was not the fact of dismissal that was objectionable in Slochower. It was the fact that the dismissal was summary without a hearing. In the Slochower case, 353 U.S. at 559, the Court said:

"The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the State. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law."

Secondly, the very hearing which was afforded petitioner was the required inquiry by the employing authority to determine petitioner's fitness and qualification for continued public employment.

One of the duties imposed on petitioner as a public employee was the duty to answer certain specific questions involving a specific subject matter, if such questions were duly asked of him by a subcommittee of the Congress of the United States (Government Code Section 1028.1). This was not a duty in the abstract—it was an absolute duty directly imposed by the state on all public employees. Privilege per-
209 mitted him to refuse to answer. He elected to refuse.

As Section 1028.1 defines any refusal to answer as "insubordination" authorizing dismissal in the manner provided by law, it was perfectly proper for the employing authority to hold a hearing to determine whether petitioner, by not perform-

ing a statutory duty, had demonstrated a lack of the necessary fitness and suitability for public employment. (Compare Christal v. Police Commission, 33 Cal. App. 2d 564, where it was held that a violation of a duty of employment would constitute a cause for dismissal, even in the absence of a specific rule requiring performance of the duty.)

Viewed in this light, Lerner v. Casey, 357 U.S. 468, 2 L. Ed. 2d 1423, 78 S. Ct. 1311, and Beilan v. Board of Education, 357 U.S. 399, 2 L. Ed 2d 1414, 78 S. Ct. 1317, fall into place beside Slochower. In both Lerner and Beilan, two public employees refused to answer questions put to them by their employers regarding their Communist activities. Both employees were discharged. In this case, at a hearing called by his employer, petitioner was asked to explain his previous insubordinate conduct. The request was rebuffed. It is evident that the hearing afforded petitioner herein was essentially the same type of hearing afforded in Lerner and Beilan. The questions put to petitioner by the subcommittee were questions with which the employer itself legitimately could have asked of petitioner. (Cf. Section 1028.1 Government Code.) As the Court pointed out in the Lerner case (357 U.S. at 477):

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"This Court pointed out in Garner that a government employee can be required upon pain of dismissal to respond to inquiry probing into matters relevant to his employment, and that present membership in the Communist Party is such a matter. See also Beilan v. Board of Public Education, supra. Certainly it is not a controlling constitutional distinction that New York, rather than impose on employees, as in Garner and Beilan, an absolute duty to respond to permissible inquiry upon threat of dismissal for refusal, has in these proceedings held that an employee lacking in candor to his governmental employer evidences doubt as to his trust and reliability."

In his concurring opinion to both Lerner and Beilan, Mr. Justice Frankfurter succinctly goes to the heart of the matter when he states (357 U.S. at 410):

"The services of two public employees have been terminated because of their refusals to answer questions relevant, or not

obviously irrelevant, to an inquiry by their supervisors
211 into their dependability. When these two employees were discharged, they were not labeled 'disloyal'. They were discharged because governmental authorities, like other employers, sought to satisfy themselves of the dependability of employees in relation to their duties. Accordingly, they made inquiries that, it is not contradicted, could in and of themselves made. These inquiries were balked. The services of the employees were therefore terminated."

2. Petitioner's own acts caused the hearing to be limited to the fact of his refusal to testify before a Federal subcommittee.

Petitioner's discharge hearing was directed at petitioner's reasons for failing to discharge a statutory duty as well as establishing the fact of nonperformance of such a duty. Thus, the scope of inquiry was not intended to be limited to a recital of events occurring before a Federal subcommittee, but was to be in a real sense an inquiry by supervisory authorities into petitioner's fitness for public service. (Cf. Slochower v. Board of Higher Education, 350 U.S. 551.) If the hearing was, in fact, limited, it was limited through the choice of petitioner. As the Court below stated, at page 684:

212 "If the scope of inquiry in the instant case was limited to a determination of whether he refused to answer the questions put to him by the committee, petitioner himself limited it. He was given the type of full hearing contemplated by the Slochower and Mass cases and Section 1028.1 of the Government Code. Petitioner elected to remain silent."

The Court further stated, at page 685:

"The records disclose that he (petitioner) was given every opportunity to explain if he wished to do so. * * * The hearing is for the purpose of giving him an opportunity to explain. If he chooses to remain silent and not do so, he cannot now be heard to say he has been denied due process. If petitioner's hearing was limited in any way, it was limited by his own voluntary choice to remain silent."

POINT II. PETITIONER WAS DISCHARGED NOT FOR ASSERTING THE FIFTH AMENDMENT PRIVILEGE, BUT FOR AN ACT OF INSUBORDINATION UNDER GOVERNMENT CODE SECTION 1028.1

Petitioner seeks to twist facts to conform to his constitutional objection when he states that he was discharged
213 "solely and only" because of his refusal to testify before a Federal committee. This contention was answered by the Court below when it stated at page 686:

"Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here * * * The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation."

Compare, Lerner v. Casey, 357 U.S. 468, 2 L. Ed. 2d 1423, 78 S. Ct. 1311, where the court in distinguishing Stochower stated (357 U.S. at 476):

"* * * it seems clear that the discharge here in any event was unlike that in Slochower v. Board of Higher Education, supra, in that as definitively interpreted by the Court of Appeals, it was not based on the fact that the employee had asserted Fifth Amendment rights."

POINT III. THE HEARING AFFORDED PETITIONER PRIOR TO HIS DISMISSAL MET ALL THE REQUIREMENTS OF DUE PROCESS

This Court, in Board of Education v. Mass, 47 Cal. 2d 494, stated the rule of due process applicable to this case. The summary discharge in Slochower was a denial of due
214 process because "In practical effect the questions asked (by the Federal committee) are taken as confessed and made the basis of the discharge. No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege." (Slochower, 350 U.S. at 558.)

The hearing before the Civil Service Commission was contained within the shape of the mold created by Slochower. Section 1028.1 limited the scope of the duty to answer questions to certain questions involving only one subject matter. Further, the period to which such questions are to be directed is the present, not the indefinite past. Thus, two of the ran-

dom factors involved in Slochower are eliminated at once from this case. Additionally, petitioner was given every opportunity to justify his exercise of the privilege. Accordingly, the dictates of the Slochower and Mass cases were conformed with and petitioner had exactly the full scale hearing required by due process.

Conclusion

The opinion of the District Court of Appeals is not at odds with any decided case cited by petitioner, either in his
215 briefs or in his Petition for Hearing. The hearing afforded petitioner was fully in accord with the dictates of Slochower and Mass. Since petitioner was guilty of insubordination, of violation of a statutory duty involving his fitness for public employment, the fact that the duty involved answering questions put to him by persons other than his employer is not material. The fact is that petitioner was given every opportunity to explain his insubordinate acts and refused the opportunity. He cannot now say that through his own act the scope of the hearing was confined, thereby denying him due process. The petition for hearing should therefore be denied.

Respectfully submitted.

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County Counsel,
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Ronald L. Schneider,
Deputy County Counsel,

By ——— ———,
Attorneys for Respondents and Appellants.

216 In the Supreme Court of the State of California,
in Bank

2d District, Division 1, Civ. No. 22680

NELSON

v.

COUNTY OF LOS ANGELES ET AL.

Order denying hearing after judgment by District Court of Appeal

Filed November 13, 1958

Order Due November 17, 1958

Appellant's petition for hearing denied.

Gibson, C. J., Carter, J., and Traynor, J. are of the opinion that the petition should be granted.

GIBSON,
Chief Justice.

[File endorsement omitted.]

217 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Date: April 17, 1956, Los Angeles, California.

218 * * * * *

Mr. TAVENNER. Mr. Arthur Globe.

Mr. MOULDER. Hold up your right hand and be sworn.

Do you solemnly swear that the testimony which you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. GLOBE. I do.

Testimony of Arthur Globe, accompanied by his counsel, Esther Shandler

Mr. GLOBE. I would like to request the committee to
219 keep these photographers away from me, if you don't mind.

Mr. JACKSON. I object, Mr. Chairman.

The press has every right to operate. It is one of the freedoms of the First Amendment.

Mr. TAVENNER. What is your name, please, sir?

Mr. GLOBE. Arthur Globe.

Mr. TAVENNER. Will counsel accompanying the witness please identify herself for the record.

Mrs. SHANDLER. Esther Shandler.

Mr. TAVENNER. When and where were you born, Mr. Globe?

Mr. GLOBE. Chicago, Illinois.

Mr. TAVENNER. When?

Mr. GLOBE. February 26, 1918.

Mr. TAVENNER. Where do you now reside?

Mr. GLOBE. In Los Angeles.

Mr. TAVENNER. How long have you lived in Los Angeles?

Mr. GLOBE. Something over 30 years.

Mr. TAVENNER. Will you tell the committee, please, what your formal educational training has been.

Mr. GLOBE. I took a Bachelor of Arts degree at the University of California in Los Angeles, in 1942, and, after my army service of 40 months, I returned to the University of Southern California, in graduate work, and completed 65 units in clinical psychology.

Mr. TAVENNER. What was the period of your mili-
220 tary service?

Mr. GLOBE. From September of 1942 until January of 1946.

Mr. TAVENNER. Was your additional graduate work after your return from service?

Mr. GLOBE. I beg your pardon. I didn't hear the question.

Mr. TAVENNER. I say was your additional graduate training after you returned from service?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Will you state again, please, what that was.

Mr. GLOBE. Three to four years of study in the field of clinical psychology and related fields.

Mr. TAVENNER. You completed your course of training then about what date? Your formal training.

Mr. GLOBE. I didn't quite complete my formal training. I took the course work.

Mr. TAVENNER. What was the approximate date when you finished your formal training?

Mr. GLOBE. It extended over a period of approximately four to four and a-half years.

Mr. TAVENNER. And that would be at what time that you terminated your work? I have asked that three times now.

Mr. GLOBE. You asked the actual day, hour and minute?

Mr. TAVENNER. No; I didn't ask that.

Mr. GLOBE. I can give it to you as the best of my recollection: from 1946 to 1950 approximately.

221 Mr. TAVENNER. That is the first time you have done that.

What has been your profession since that time?

Mr. GLOBE. My profession has been that of a psychologist and that of a social worker, both areas concerned with mental health.

Mr. TAVENNER. How have you been employed in your work as a social worker?

(The witness confers with his counsel.)

Mr. GLOBE. Would you be more specific, please?

Mr. TAVENNER. What has been your employment as a social worker since 1950?

Mr. GLOBE. I find the questioning as to my employment a little difficult to accept under the circumstances. I can't quite see how my employment, my employment experience, present or past, can be the concern of the committee.

I do my work and I do it as well as I can, and that is the situation.

I don't understand the line of your questioning, Mr. Tavenner.

Mr. SCHERER. Mr. Chairman, I ask that you direct the witness to answer Mr. Tavenner's question with reference to his employment.

(The witness confers with his counsel.)

Mr. JACKSON. It is a matter of proper identification.

Mr. MOULDER. At the request of members of the
222 committee, the witness is directed to answer the question.

(The witness confers with his counsel.)

Mr. GLOBE. I have been employed as a social worker, or at least in social agencies twice. The present employment is that of a social worker, and the past employment was also—In 1950 I worked as a social worker in a social agency.

Mr. TAVENNER. Where?

Mr. GLOBE. Where? In Los Angeles.

Mr. SCHERER. By whom are you presently employed?

Mr. GLOBE. By the County of Los Angeles.

Mr. SCHERER. As a social worker?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Where did you attend school between 1946 and 1950?

Mr. GLOBE. I answered that question already.

Mr. TAVENNER. You said you attended school, but you didn't state where, according to my recollection.

Mr. GLOBE. University of Southern California.

Mr. TAVENNER. That was the period that you were taking graduate work, I believe. Is that correct?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Were you familiar with an organization in that school composed largely of graduate students known as the John Reid Club of the Communist Party?

Mr. GLOBE. My familiarity or lack of familiarity with
223 any organization that might exist in the country today is entirely my own business, and termed under the Constitution of the United States.

This is a matter of personal knowledge. I don't think that this committee has any right to inquire into my personal

knowledge in this or any other respect since they cannot legislate what I do nor what I do not know, or what I intend to know.

Mr. SCHERER. I ask that you direct the witness to answer the question.

Mr. MOULDER. The witness is directed to answer the question.

As I understand it——

Pardon me.

Mr. GLOBE. Yes, sir.

Mr. MOULDER. You are directed to answer.

Mr. GLOBE. Finding the question completely out of line as far as my rights as a citizen are concerned, I refuse to answer this question under the First and Fifth Amendments of the Constitution of the United States.

Mr. TAVENNER. Were you a member of the John Reid Club of the Communist Party while in attendance at the university?

Mr. GLOBE. This question is even more objectionable than the first one for the same reasons I previously stated, and I object to it, and I refuse to answer on the same grounds.

224 Mr. TAVENNER. Were you acquainted with any of the activities of a group of the Communist Party known as the John Reid Club in the Communist Party?

Mr. GLOBE. I refuse to answer on the same grounds.

Mr. TAVENNER. Did you observe the Communist Party activities since 1950 of any persons known to you to be members of the John Reid Club of the Communist Party while you were at the university?

Mr. GLOBE. I feel, Mr. Tavenner, if you want information about names, people and anything else that you might be concerned with, I suggest that you get one of your trained seals up here and ask them.

I refuse to answer this.

Anyone or any associations I may have had in the past or expect to have in the future are entirely my own.

I refuse to answer this question as it is an invasion of my rights, invasion of the rights of all the American citizens.

I refuse to answer on the basis of the First and Fifth Amendments, both.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. GLOBE. I refuse to answer this question, as previously stated for previous reasons, and on the same grounds.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

Mr. MOULDER. Mr. Doyle?

Mr. DOYLE. No questions.

225 Mr. MOULDER. Any questions, Mr. Jackson?

Mr. JACKSON. No questions.

Mr. MOULDER. Mr. Scherer?

Mr. SCHERER. Did this witness say he served in the armed forces of the United States?

Mr. GLOBE. I certainly did.

Mr. TAVENNER. Yes.

Mr. SCHERER. When you were a member of the armed forces of the United States, Witness, were you a member of the Communist Party at that time?

Mr. GLOBE. I refuse to answer: First and Fifth Amendments. You have no right to ask.

Mr. SCHERER. I have no further questions.

Mr. MOULDER. I have one question.

Do you have any knowledge or information of the activities of any person in connection with subversive, communistic activities?

(The witness confers with his counsel.)

Mr. SCHERER. It is not funny, Witness, at all.

Mr. GLOBE. It is a rather difficult question to answer since it contains so many elements that are implied and have not been established since I have been on the stand.

As far as I am concerned, these implications have not been established in the country at all. The whole idea——

Mr. SCHERER. You say there has been no establish-

226 ment in this country of subversive activities when our atomic secrets were stolen and now rest in the archives of the Kremlin because of subversives in government?

(The witness confers with his counsel.)

Mr. GLOBE. I would be glad to discuss this or any other question you might ask me——

Mr. Scherer is it?

Mr. SCHERER. When you are not under oath.

Mr. GLOBE. When I am not on the stand under the circumstances of this committee; where I would be glad to discuss it under oath if you too were under oath, sir.

Under the circumstances I feel that I am, since I am a target for what seems to be and has been proved to be quite unprincipled attacks that are aimed at maligning and destroying a person's working ability, I refuse to answer this question on the same grounds as previously.

Mr. MOULDER. Very well.

Is that all?

Mr. TAVENNER. Yes.

Mr. MOULDER. The witness is excused.

Claim your witness fees with the deputy clerk who sits at the desk immediately behind the witness chair.

The committee will stand in recess for a period of 5 minutes.

(Whereupon, a short recess was taken, Representatives Moulder, Doyle, Jackson and Scherer being present.)

227 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Petition for writ of mandate

The clerk is ordered to file this petition without prior service other than which already may have been made.

Nov. 9, 1956. JOHN J. FORD, *Judge.*

I

Petitioner is a resident of the County of Los Angeles, State of California, and a citizen of the United States. He was employed by the County of Los Angeles, Department of Charities, as a Social Worker, on March 28, 1955, and continued in said employment until May 2, 1956 when petitioner was discharged from his employment, as will be more particularly set forth hereinbelow. During the entire period of his employment, petitioner performed the duties of his employment satisfactorily; his duties were those of Social Case Worker.

II

The respondent County of Los Angeles is a body
228 corporate and politic, and a political subdivision of the State of California. The respondent Board of Supervisors is the governing agency of the County of Los Angeles; Burton W. Chace is, and at all times mentioned herein has been, a member of and chairman of said Board; and the respondents Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup are, as they have at all times herein been, members of said Board; respondent William A. Barr is, and at all times herein was, Superintendent of Charities, Department of Charities, County of Los Angeles, and as such has at all times herein had, and now has, authority to employ and to discharge employees of the County of Los Angeles in said Department of Charities.

III

On April 6, 1956, the petitioner was served with a subpoena to appear before a Committee of the United States Congress, the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, California, on April 20, 1956; at said time and place the petitioner was placed under oath, and asked a series of questions by Committee Members and by Counsel for said Committee; the petitioner answered some of said questions, and with respect to other questions, pertaining to political opinion and association, including membership in the Communist Party, the petitioner refused to answer said questions, basing his refusal upon the

guarantees of the First and Fifth Amendments to the Constitution of the United States.

IV

On May 2, 1956, the petitioner was discharged from his employment aforesaid by the County of Los Angeles, by William A. Barr, respondent, as Superintendent of Charities, Department of Charities of said County; the sole reason for said discharge was the refusal of the petitioner to answer a question propounded to him by said Committee on Un-American Activities on the occasion aforesaid, pertaining to his po-
229 litical affiliation, namely as to membership in the Communist party; and the refusal of the petitioner to answer said question based upon the guarantees of the First and Fifth Amendments to the Constitution of the United States.

Thereupon, the petitioner requested and was granted a hearing pertaining to said discharge, before the Civil Service Commission of Los Angeles County. Petitioner appeared before said Commission for the purpose of a hearing on May 29, 1956; thereupon the said Commission denied a hearing to the petitioner.

V

As of the date of the discharge of the petitioner, he was classified as a Social Worker, temporary; he had in fact successfully completed two six-month periods of evaluation, both of which were satisfactory, and thereby rendering petitioner eligible for permanent status as a Social Worker; on March 24, 1956 petitioner took the Civil Service examination for Social Worker receiving a grade of 89.49%, or more than passing or satisfactory; and petitioner, thereupon, became eligible for appointment as a Social Worker, permanent probationary.

VI

In 1955, the petitioner took the State loyalty oath, as required by the Levering Act.

VII

At no time subsequent to the appearance of the petitioner before said United States Congressional Committee on April 20, 1956, did the respondents or any of them make inquiry of the petitioner pertaining to his opinions, political or otherwise, or affiliations or membership, political or otherwise; nor did any of said respondents make any inquiry of the petitioner pertaining to any alleged or claimed membership in the Communist Party.

VIII

The discharge of the petitioner, as aforesaid, was and is illegal and void, and abridges the constitutional rights of
230 the petitioner as guaranteed to him by the Constitution of the United States and by the Constitution of the State of California, in the following respects and particulars:

1. The discharge was and is arbitrary and unreasonable.

2. The discharge violates the rights of the petitioner under the Constitution of the United States, in that

a. With respect to the First and 14th Amendments, it abridges freedom of thought, freedom of speech and freedom of assembly as guaranteed by said First Amendment;

b. With respect to the Fifth Amendment, in that it abridges his right to be free from being a witness against himself;

c. With further respect to the 14th Amendment, it abridges his privileges and immunities as a citizen of the United States.

3. The discharge violates the rights of the petitioner under the Constitution of California, in that

a. It abridges his right to free speech, as guaranteed by Article I Section 9, and his right to free assembly as guaranteed by Section 10 of said Article;

b. It violates his immunity from being a witness against himself as provided for by Article I, Section 13.

4. The questions propounded to him by said United States Congressional Committee, were not within the scope of any lawful authority of said Committee and were not pertinent to any lawful authority thereof.

IX

Petitioner has suffered great and irreparable harm by being terminated from his employment and deprived of his means of livelihood in his specialized field of endeavor, and petitioner has no plain, speedy and adequate remedy at law, or otherwise than by this Petition for Writ of Mandate.

231 Wherefore petitioner prays:

1. A Writ of Mandate issue from this Honorable Court directing respondents County of Los Angeles Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board respectively and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

2. That an Alternative Writ issue from this Honorable Court directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge; and ordering said respondents to show cause, at a time and place to be set by the Court, as to why a permanent writ of mandate should not issue directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

3. For costs of suit;

4. For such other and further relief as petitioner may be entitled to.

A. L. WIRIN,
WILLIAM T. PILLSBURY,
A. L. WIRIN,
By A. L. Wirin,
Attorneys for Petitioner.

231a (Verification.)

232 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER;

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Alternative writ of mandate

Filed November 9, 1956

[File endorsement omitted.]

The People of the State of California to County of Los Angeles; Board of Supervisors, Los Angeles County, Burton W. Chace, Chairman Thereof, Herbert C. Legg, Kenneth Hahn, John Anson Ford, and Roger W. Jessup, Members Thereof; and William A. Barr, Superintendent of Charities, Department of Charities, County of Los Angeles, Respondents Above Named:

Whereas, it manifestly appears to us by the verified petition of Arthur Globe, that notwithstanding there be no cause for the discharge of petitioner as an employee of the County of

Los Angeles; the respondents have discharged said petitioner from his position, and that there is not a plain,
233 speedy, or adequate remedy at law.

Therefore, we do command you, County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and Members of said Board respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

Or That You Show Cause before this Court, the Superior Court of Los Angeles County at Los Angeles, California in Department 34 thereof on the 23d day of November 1956, at the hour of 9:30 A.M., why you have not done so.

HAROLD J. OSTLY,
Clerk.

By J. E. ROSE,
Deputy.

Let the within writ issue.
Dated: November 9, 1956.

John J. Ford,
JOHN J. FORD,
Judge, Superior Court.

234 In the Superior Court of the State of California
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Respondents return to the alternative writ of mandate; answer to the petition for said writ, and points and authorities

Filed November 29, 1956

[File endorsement omitted.]

Comes Now, the respondents above named and for their return to the Alternative Writ of Mandate issued herein answer the Petition for said Writ as follows:

I

Answering Paragraph I of said Petition, respondents allege that the petitioner, Arthur Globe, is a resident of the County of Los Angeles and is a citizen of the United States. That he was first employed on March 28, 1955 as a non-eligible, temporary employee in the position of social worker in the Department of Charities and on May 1, 1955 he became a temporary, eligible employee in said position and continued as such until May 2, 1956, on which date he was discharged from his employment. Except as specifically admitted herein, respondents deny all of the allegations therein contained.

235 II

Answering Paragraph III of said Petition, respondents admit that on April 6, 1956, petitioner was served with a subpoena

to appear before the Committee on Un-American Activities, House of Representatives, at Los Angeles, California, on April 20, 1956. That petitioner appeared before the Committee at said time and place pursuant to said subpoena and was placed under oath and asked a series of questions by committee members and counsel for said committee.

Further answering Paragraph III, respondents allege that with reference to certain questions asked of the petitioner, the following occurred at said hearing:

"Mr. TAVENNER. What has been your employment as a social worker since 1950?

Mr. GLOBE. I find the questioning as to my employment a little difficult to accept under the circumstances. I can't quite see how my employment, my employment experience, present or past, can be the concern of the committee.

I do my work and I do it as well as I can, and that is the situation.

I don't understand the line of your questioning, Mr. Tavenner.

Mr. SCHERER. Mr. Chairman, I ask that you direct the witness to answer Mr. Tavenner's question with reference to his employment.

(The witness confers with his counsel.)

Mr. JACKSON. It is a matter of proper identification.

Mr. MOULDER. At the request of members of the committee, the witness is directed to answer the question.

(The witness confers with his counsel.)

Mr. GLOBE. I have been employed as a social worker, or at least in social agencies twice. The present employment
236 is that of a social worker, and the past employment was also—In 1950 I worked as a social worker in a social agency. * * *

Mr. TAVENNER. Were you familiar with an organization in that school composed largely of graduate students known as the John Reid Club of the Communist Party?

Mr. GLOBE. My familiarity or lack of familiarity with any organization that might exist in the country today is entirely my own business, and termed under the Constitution of the United States.

This is a matter of personal knowledge. I don't think that this committee has any right to inquire into my personal knowledge in this or any other respect since they cannot legislate what I do nor what I do not know, or what I intend to know.

Mr. SCHERER. I ask that you direct the witness to answer the question.

Mr. MOULDER. The witness is directed to answer the question.

As I understand it——

Pardon me.

Mr. GLOBE. Yes, sir.

Mr. MOULDER. You are directed to answer.

Mr. GLOBE. Finding the question completely out of line as far as my rights as a citizen are concerned, I refuse to answer this question under the First and Fifth Amendments of the Constitution of the United States.

Mr. TAVENNER. Were you a member of the John Reid Club of the Communist Party while in attendance at the university?

Mr. GLOBE. This question is even more objectionable than the first one for the same reasons I previously stated, and I object to it, and I refuse to answer on the same grounds.

Mr. TAVENNER. Were you acquainted with any of the
237 activities of a group of the Communist Party known as the John Reid Club in the Communist Party?

Mr. GLOBE. I refuse to answer on the same grounds.

Mr. TAVENNER. Did you observe the Communist Party activities since 1950 of any persons known to you to be members of the John Reid Club of the Communist Party while you were at the university?

Mr. GLOBE. I feel, Mr. Tavenner, if you want information about names, people and anything else that you might be concerned with, I suggest that you get one of your trained seals up here and ask them.

I refuse to answer this.

Anyone or any associations I may have had in the past or expect to have in the future are entirely my own.

I refuse to answer this question as it is an invasion of my rights, invasion of the rights of all the American citizens.

I refuse to answer on the basis of the First and Fifth Amendments, both.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. GLOBE. I refuse to answer this question, as previously stated for previous reasons, and on the same grounds. * * *

Mr. SCHERER. When you were a member of the armed forces of the United States, Witness, were you a member of the Communist Party at that time?

Mr. GLOBE. I refuse to answer: First and Fifth Amendments. You have no right to ask.

Mr. SCHERER. I have no further questions.

Mr. MOULDER. I have one question.

Do you have any knowledge or information of the activities of any person in connection with subversive, communistic activities?

238 (The witness confers with his counsel.)

Mr. SCHERER. It's not funny, Witness, at all.

Mr. GLOBE. It is a rather difficult question to answer since it contains so many elements that are implied and have not been established since I have been on the stand.

As far as I am concerned, these implications have not been established in the country at all. The whole idea———

Mr. SCHERER. You say that has been no establishment in this country of subversive activities when our atomic secrets were stolen and now rest in the archives of the Kremlin because of subversives in government?

(The witness confers with his counsel.)

Mr. GLOBE. I would be glad to discuss this or any other question you might ask me——

Mr. Scherer is it?

Mr. SCHERER. When you are not under oath.

Mr. GLOBE. When I am not on the stand under the circumstances of this committee; where I would be glad to discuss it under oath if you too were under oath, sir.

Under the circumstances I feel that I am, since I am a target for what seems to be and has been proved to be quite unprincipled attacks that are aimed at maligning and destroying a

person's working ability, I refuse to answer this question on the same ground as previously. * * *"

IV

Answering Paragraph IV of said Petition, respondents allege that on May 2, 1956, respondent, William A. Barr, as Superintendent of Charities, Department of Charities, Los Angeles County, discharged petitioner from his position for his actions before said committee, for his refusal to cooperate with said committee and his refusal to answer the questions propounded to him as hereinabove set forth. That a copy of
239 said letter of dismissal, marked Exhibit "A" is attached hereto, made a part hereof and specifically referred to herein. That the petitioner requested a hearing pertaining to his discharge, before the Civil Service Commission of Los Angeles County and that he appeared before said Commission on May 29, 1956, at which time said Civil Service Commission denied petitioner a hearing upon the ground that a temporary employee is not entitled to a hearing upon a discharge. Except as specifically admitted herein, respondents deny all of the allegations therein contained.

V

Answering Paragraph V of said Petition, respondents admit that as of the date of petitioners discharge, he was classified as a social worker, temporary and had completed two, six-month periods in said position. Further answering said paragraph, respondents allege that at said time he was on an eligible list for a position as social worker. That on March 24, 1956, he took a Civil Service Examination for social worker and received a grade on said examination of 89.94 per cent; that said grade was more than a passing grade and as a result of said examination, petitioner was placed upon an eligible list for appointment as a social worker. Except as specifically admitted, respondents deny all of the allegations therein contained.

VI

Answering Paragraphs VI and VIII of said Petition, respondents admit all of the allegations therein contained.

VII

Answering Paragraph VIII of said Petition, respondents deny all of the allegations therein contained and in that connection allege that the discharge of petitioner was a legal and valid discharge and pursuant to the provisions of Section 1028.1 of the Government Code of the State of California.

Wherefore, respondents pray that the Peremptory Writ of Mandate be denied and the Alternative Writ of Man-
240 date discharged, and for their costs herein incurred.

Respectfully submitted.

HAROLD W. KENNEDY,
County Counsel,
WM. E. LAMOREAUX,
Assistant County Counsel,
and FRED R. METHENY,
Deputy County Counsel.
By FRED R. METHENY,
Attorneys for Respondents.

241 *Exhibit "A" to Respondents return, etc.*

MAY 2, 1956.

Mr. ARTHUR GLOBE,
460½ N. GARDNER STREET,
LOS ANGELES 36, CALIFORNIA.

DEAR SIR: You are hereby notified that effective of this date you are discharged from your position of Social Case worker, Bureau of Public Assistance, Department of Charities of the County of Los Angeles, without further notice. This action is based upon the grounds that you have been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California which provides:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a ques-

tion or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States of *of* any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States of *of* any State.

(c) Past knowing membership any *any* time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States of *of* any state.

242 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law.

The specific facts which are the basis for the above grounds of your discharge are that you were duly and regularly subpoenaed to appear before the United States House of Representatives Committee on Un-American Activities, a duly authoirzed committee of the Congress of the United States; that on April 20, 1956, you did appear before said committee; that you were put under oath and were asked a series of questions by Counsel of said committee, which questions directly related to the above listed categories, including the following questions:

"Are you a member of the Communist Party now?"; that you refused to answer under oath the above question propounded to you by the Counsel of the United States House of Representatives Committee on Un-American Activities.

On April 6, 1956, you were personally served a copy of the Board Order of February 19, 1952, concerning the possible ap-

pearance of certain employees before the House Un-American Activities Committee. This Board Order related to your duty to testify as a County employee when appearing before said committee.

You may within ten days of service upon you of this letter file a written answer to these charges with this office sending a copy thereof to the County Civil Service Commission, 501 North Main Street, Los Angeles 12, California.

You may, if you so desire, within ten days of service upon you of this letter request a hearing on these charges before said Civil Service Commission.

Yours very truly,

(S) *William A. Barr,*
WILLIAM A. BARR,
Superintendent of Charities.

WAB:AK:ba
cc: Civil Serv. Comm.; County Counsel, Payroll Division Head, Personnel Mgr., Char.

243 Proof of service (omitted in printing).

244 MEMORANDUM FOR COUNSEL

Omitted. Printed side page 148, supra.

250 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669-480

Findings of fact and conclusions of law

May 28, 1957

[Title omitted.]
[File endorsement omitted.]

This proceeding came on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, Fred Okrand and William T. Pillsbury appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred B. Metheny, Deputy

County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of the counsel; and the matter having been submitted, now makes its Findings of Fact and Conclusions of Law as follows:

The Court finds:

251 I

It is true that petitioner was employed on March 28, 1955, as a non-eligible, temporary employee in the position of social worker in the Department of Charities and on May 1, 1955 he became a temporary, eligible employee in said position and continued as such until May 2, 1956, on which date he was discharged from his employment.

II

It is true that petitioner was served with a subpoena on April 6, 1956, to appear before the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, California, on April 20, 1956; that petitioner appeared before the committee at said time and place and was placed under oath and refused to answer questions asked of petitioner by counsel for said Committee; said questions which petitioner refused to answer pertained to past and present knowing membership in the Communist Party; that the petitioner refused to answer said questions basing his refusal upon the First and Fifth Amendments to the Constitution of the United States.

III

It is true that on May 2, 1956, the petitioner was discharged from his employment aforesaid by the County of Los Angeles, by William A. Barr, Respondent, as Superintendent of Charities, Department of Charities of said County; that the sole reason for his discharge was his refusal to answer questions propounded to petitioner pertaining to past and present knowing membership in the Communist Party; and that petitioner's refusal to answer said questions was based upon the First and Fifth Amendments to the Constitution of the United States.

IV

It is true that petitioner requested a hearing pertaining to said discharge, before the Civil Service Commission of
252 Los Angeles; that petitioner appeared before said Commission for the purpose of a hearing on May 29, 1956, and that at said time and place the said Commission refused to grant petitioner a hearing; that no other hearing was given to petitioner by respondents.

From the aforesaid findings of fact the Court concludes as a matter of law:

I

That Section 1028.1 of the Government Code of the State of California provides for the dismissal of an employee "In the manner provided by law" and that before an employee may be found guilty of insubordination under the aforementioned section of the Government Code of the State of California, there must be a full hearing granted to said employee in order that a determination be made as to whether or not his reasons for invoking the Constitutional privilege against self-incrimination are sufficient.

II

That an employee of the County of Los Angeles may not be discharged from his employment under Section 1028.1 of the Government Code without being afforded a full hearing and inquiry as to the sufficiency of the employee's reasons for invoking the privilege against self-incrimination and of invoking protections afforded the employee under the United States Constitution, which hearing shall embrace and include any matter germane to the charges filed against him, all for the purpose of determining whether the dismissal from employment under the aforementioned Code Section is warranted.

III

That the refusal of Los Angeles County to grant an employee a full hearing as aforesaid constitutes a denial of due process of law and is an arbitrary discrimination which is prohibited by the United States Constitution.

253 IV

That a Peremptory Writ of Mandate should be granted directing the respondents County of Los Angeles and the Board of Supervisors thereof to provide petitioner a hearing on the petitioner's discharge in the manner provided by law.

Let judgment be entered accordingly.

Dated: May 28, 1957.

JOHN J. FORD,
Judge of the Superior Court.

254 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669-480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Judgment

Dated May 28, 1957 and entered May 29, 1957

[File endorsement omitted.]

This proceeding having come on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, Fred Okrand and William T. Pillsbury appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of the counsel, and the matter having been submitted, and the Court having made and filed its Findings of Facts

and Conclusions of Law, and having ordered judgment to be entered in accordance therewith.

255 Now, therefore, it is hereby ordered, adjudged and decreed that a Peremptory Writ of Mandate should be granted ordering the respondents County of Los Angeles and the Board of Supervisors thereof to grant to petitioner a full hearing as to the sufficiency of the petitioner employee's reasons for invoking the privilege against self-incrimination and of invoking the protections afforded the employee under the United States Constitution; which hearing shall include and embrace any matter germane to the charges filed against him, for the purpose of determining whether the dismissal of petitioner from employment under Section 1028.1 of the Government Code of the State of California was warranted.

Petitioner shall recover his costs in this proceeding as against said respondents county of Los Angeles and the Board of Supervisors thereof in the amount of $.....

Dated this 28th day of May 1957.

JOHN J. FORD,
Judge of the Superior Court.

256 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669480

Notice of Appeal

Filed June 26, 1957

To the Clerk of the above-entitled court:

[Title omitted.]

[File endorsement omitted.]

You will please take notice that the Respondents of the above-entitled action hereby appeal to the District Court of Appeal of the State of California, Second Appellate District from the judgment therein entered by the court in this action

on the 29th day of May, 1957, in favor of the Petitioner and against the Respondents and from the whole thereof.

Dated this 26th day of June, 1957.

HAROLD W. KENNEDY,
County Counsel,
WILLIAM E. LAMOREAUX,
Assistant County Counsel,
FRED R. METHANY,
Deputy County Counsel,
By Fred R. Methany,
FRED R. METHENY,
Attorneys for Respondents.

257 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669480

Respondents' notice and request for clerk's transcript on appeal

Filed June 26, 1957

To the Clerk of the Above-Entitled Court:

[File endorsement omitted.]

[Title omitted.]

Please Take Notice that the Respondents County of Los Angeles et al., having filed a Notice of Appeal herein, do hereby request that the Clerk of the above-entitled court prepare a transcript in accordance with the Rules on Appeal of the State of California in force and effect:

1. All Pleadings filed by Petitioner and Respondents;
2. The Judgment and Memorandum for Counsel;
3. Notice of Entry of Judgment;
4. Notice of Appeal, together with all exhibits either offered or admitted into evidence by the Respondents or the Petitioner;

258 5. Alternative Writ of Mandate herein; and
6. Findings of Fact and Conclusions of Law.

Dated this 26th day of June, 1957.

HAROLD W. KENNEDY,
County Counsel,
WILLIAM E. LAMOREAUX,
Assistant County Counsel and
FRED R. METHENY,
Deputy County Counsel,
By Fred R. Metheny,
FRED R. METHENY,
Attorneys for Respondents.

259 [Clerk's certificates to foregoing transcript omitted in printing.]

261 In the District Court of Appeals of the State of California, Second Appellate District, Division One

[Civ. No. 2275. Second Dist., Div. One. Sept. 18, 1958.]

ARTHUR GLOBE, RESPONDENT

v.

COUNTY OF LOS ANGELES ET AL., APPELLANTS

[1] PUBLIC EMPLOYEES—DUTY TO DISCLOSE INFORMATION.—Loyalty on the part of a public employee is essential to the order and peaceful operation of government and is relative to fitness for such employment; therefore, such an employee may be required to disclose certain information relative to fitness and loyalty as a reasonable condition for retaining public employment although the disclosures may in some cases constitute self-incrimination.

[2] ID.—DISCHARGE.—A temporary public employee who refused to answer questions asked by a legislative committee on the ground of self-incrimination was discharged "in the manner provided by law" under Gov. Code, § 1028.1, where he was summarily dismissed and was refused a hearing before a county civil service commission, since the county charter and the civil service rules under which the employee was hired provided that

a temporary employee was not entitled to a hearing on his dismissal, except in case of fraud or discrimination because of political or religious opinions, racial extraction or organized labor membership.

[3] ID.—DISCHARGE.—A public employee who was dismissed after refusing to answer questions asked by a legislative committee on the ground of self-incrimination was not discharged because of the implication of guilt that invoking his constitutional privilege may have carried, but was dismissed because he was guilty of insubordination and violating Gov. Code, § 1028.1.

[4] ID.—DISCHARGE.—A temporary public employee who, after refusing to answer questions asked by a legislative committee on the ground of self-incrimination, was summarily dismissed and refused a hearing before a county civil service commission was not thereby denied due process, since such temporary employee had no vested right to public employment and even if he did, due process does not always require a hearing but only that the rudiments of fair play be observed. In addition, government employ is not properly protected by the due process clause.

[2] See Cal. Jur. 2d, Public Officers, § 239; Am. Jur., Public Officers, § 181 et seq.

[3] Assertion of immunity as ground for removing or discharging public employee, note, 44 A.L.R. 2d 789.

McK. Dig. References: [1] Public Employees, § 6; [2–4] Public Employees, § 12.

262 Appeal from a judgment of the Superior Court of Los Angeles County. John J. Ford, Judge. Reversed.

Proceeding in mandamus to compel a county and its officers to grant a temporary county employee a full hearing in respect to his discharge from county employment. Judgment granting writ, reversed.

Harold W. Kennedy, County Counsel, William E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, for Appellants.

A. L. Wirin, Fred Okrand and William T. Pillsbury for Respondent.

Opinion

September 18, 1958

LILLIE, J.—This is an appeal by the county of Los Angeles, the board of supervisors and the superintendent of charities from a judgment in a mandamus proceeding ordering them to grant petitioner Arthur Globe, a temporary county employee, a full hearing in respect to his discharge from county employment.

On March 28, 1955, Arthur Globe was employed on a "non-eligible temporary" basis as a social worker in the Department of Charities. On May 1, 1955, he became a "temporary, eligible" employee in the same position continuing as such until May 2, 1956, the date of his discharge from county service. On April 20, 1956, petitioner, having been duly subpoenaed, appeared before a Subcommittee on Un-American Activities of the United States House of Representatives, and after having been sworn refused to answer certain questions relating to past and present knowing membership in the Communist Party, his familiarity with and membership in a certain "John Reid Club of the Communist Party," his acquaintance with the activities of any persons known to him to be members of that club and whether during his service in the armed forces he had been, or was then, a member of the Communist Party. Petitioner refused to answer such questions, basing his refusal on the First Amendment of the United States Constitution and on a claim of privilege against self-incrimination under the Fifth Amendment.

Shortly thereafter petitioner was summarily discharged from county employment, his conduct in refusing to answer such questions being deemed insubordination and a violation of section 1028.1 of the Government Code of the State of California. This section provides in part as follows:

"It shall be the duty of any public employee who
263 may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States or of the Legislature of this

State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

* * * * *

"(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of *insubordination* and guilty of *violating* this section and shall be suspended and dismissed from his employment *in the manner provided by law*." [Emphasis added.]

Petitioner requested a hearing before the Los Angeles County Civil Service Commission concerning his discharge and appeared before it on May 29, 1956. The commission ruled that petitioner was a temporary employee and therefore, pursuant to sections 19.07 and 19.09 of the county civil service rules was not entitled to such a hearing as a matter of right.

Thereafter petitioner instituted the present mandamus proceeding seeking reinstatement as a county employee and reimbursement for loss of compensation. The trial court found that regardless of his temporary status he was entitled to a hearing before the commission to explain his reasons for refusing to answer the questions propounded and that appellants' refusal to give him a full hearing constituted a denial of due process. The trial court granted a peremptory writ of mandate directing that a hearing be granted on petitioner's discharge.

The issue before us is whether the county civil service commission is required to hold a hearing on the discharge of a temporary county employee for a violation of section 1028.1 of the Government Code.

Appellants contend that in petitioner's discharge from county employment without a hearing there was no

264 arbitrary act of discrimination which denied him due process. With this position we agree.

Authority to prescribe regulations for the admission of persons into civil service and their discharge from employment has been vested by the Charter of the County of Los Angeles in the Civil Service Commission. The rules of the commission have the same force and effect as charter provisions as long as they are applied in the scope contemplated by the charter. (Campbell v. City of Los Angeles, 47 Cal. App. 2d 310 [117 P. 2d 901]; Bruce v. Civil Service Board, 6 Cal. App. 2d 633 [45 P. 2d 419].)

Section 34 of article IX of the Charter of the County of Los Angeles provides in pertinent part as follows:

"The Commission shall prescribe, amend and enforce rules for the classified service, which shall have the force and effect of law; * * *;

"The rules shall provide * * *

"(7) For a period of probation not to exceed six months before appointment or promotion is made complete, during which period a probationer may be discharged or reduced with the consent of the Commission. * * *

"(9) For temporary employment of persons on the eligible list. * * *"

Section 19.07 of the civil service rules provides:

"An employee who has not yet completed his first probationary period may be discharged or reduced in accordance with Rule 19.09 by the appointing power by written notice, served on the employee and a copy filed with the Commission, specifying the grounds and the particular facts on which the discharge or reduction is based. Such an employee shall be entitled to answer, explain, or deny, the charges in writing within ten business days *but shall not be entitled to a hearing, except in case of fraud or of discrimination because of political or religious opinions*, racial extraction, or organized labor membership." [Emphasis added.]

Section 19.09 states in pertinent part:

"If the Commission has consented prior to the filing of an answer by the employee and such answer alleges fraud, or discrimination as above stated, and requests a hearing, the

Commission shall immediately set aside its consent. The hearing shall be limited to the question of fraud or discrimination. After such hearing the Commission may consent to the discharge or may order such employee reinstated; and unless such order otherwise provides, it shall be effective as of the date of the discharge or reduction.

"No consent need be secured to the discharged or reduction of a temporary or recurrent employee."

It is undisputed that petitioner Globe had "not yet completed his first probationary period" and was employed only on a temporary, eligible basis. The record discloses that a written notice was served upon him specifying the reason for his discharge—insubordination and a violation of section 1028.1 of the Government Code.

The right to discharge a public employee for refusal to testify under the circumstances here involved, the fact that his refusal constituted insubordination, and the conclusion that either disloyalty or insubordination establishes unfitness have been determined by prior judicial decisions. (Board of Education v. Mass, 47 Cal. 2d 494 [304 P. 2d 1015]; Steinmetz v. California State Board of Education, 44 Cal. 2d 816 [285 P. 2d 617].) Petitioner at no time has denied that he refused to testify before the House Subcommittee on Un-American Activities and answer questions relating to his past or present knowing membership in the Communist Party. At no time has the cause of petitioner's discharge been alleged to be anything but insubordination and a violation of section 1028.1, nor indeed under the record before us could it be. No question of opinion or political belief was involved. Under these circumstances no hearing on discharge was provided or permitted a temporary employee under the civil service rules, nor was the consent of the commission necessary. The Los Angeles County Charter (§ 34, art. IX) and the rules of the Los Angeles County Civil Service Commission (§§ 19.07 and 19.09) control on the issue whether a hearing had to be granted on discharge of an employee in petitioner's class. They require none. On the applicability of the charter and rules the court stated in Cronin v. Civil Service Com., 71 Cal. App. 633, at pages 641–642 [236 P. 339]: "For this court

now to hold that a hearing should be had by the Commission before a principal could discharge a deputy when none had been provided for in the charter, would be for this court to usurp the functions of the freeholders and to change their work in a material respect. This, it has neither the right nor the inclination to do. We must accept the charter as framed by the freeholders, and not attempt to enlarge its scope under the guise of judicial interpretation. Neither subdivision 13 of said section 34 of the charter nor rule XI, as prescribed by the Commission, provides for any hearing upon the
266 charges preferred against a deputy before the principal may discharge him. All that is required by the charter and the rules of the Commission is that the officer discharging the deputy shall serve upon him, a reasonable time before his discharge, and file with the Commission, a statement of the reasons for the discharge."

Section 1028.1 of the Government Code, and similar legislation, providing that a public employee who fails or refuses on any ground whatsoever to answer questions propounded to him by a legislative committee relating to past and present knowing membership in the Communist Party shall be guilty of insubordination and of violating the section and shall be "dismissed from his employment in the manner provided by law," have been held constitutional. (Board of Education v. Mass, 47 Cal. 2d 494 [304 P. 2d 1015]; Steinmetz v. California State Board of Education, 44 Cal. 2d 816 [285 P. 2d 617].) Both the Legislature and the courts have declared that the Communist Party is a continuing conspiracy against our Government (Gov. Code, § 1027.5; Ed. Code, § 12600; Black v. Cutter Laboratories, 43 Cal. 2d 788 [278 P. 2d 905]), and without doubt the state has the power and authority to require county employees to testify on such subjects as a condition to continued employment. (Adler v. Board of Education of New York, 342 U.S. 485 [72 S. Ct. 380, 96 L. Ed. 517, 27 A.L.R. 2d 472].) [1] Loyalty on the part of county employees is essential to the order and peaceful operation of government and is relative to fitness for such employment. Therefore a government employee may be required to disclose certain information relative to fitness and loyalty as a reasonable condition for retaining

public employment even though the disclosures may in some cases constitute self-incrimination. (Board of Education v. Mass, supra; 47 Cal. 2d 494; Steinmetz v. California State Board of Education, supra, 44 Cal. 2d 816.) [2] Although by the terms of section 1028.1 of the Government Code petitioner must be discharged "in the manner provided by law," under the authority (charter and civil service rules) by which he was hired and held his employment, he as a temporary employee was not entitled to a hearing upon discharge. Therefore, as applied to him section 1028.1 does not require a hearing and a county temporary employee who is summarily discharged is discharged in the "manner provided by law." By refusing him a hearing it is clear that no right was taken from petitioner which he otherwise would have had, or been entitled to.

267 In demanding a hearing regardless of his employment status, petitioner is in effect asking the court to equalize the rights of all civil service employees whether they be temporary, probationary or permanent. To do so would lose sight of the entire philosophy of civil service in government and destroy the distinction between the various classifications. The basic reasoning behind the "stepladder" classifications in civil service is the necessity for a trial period for both employee and employer. It is during this time the employer formulates its opinion of the suitability, capability, ability to work with others, stability and loyalty of the employee, and determines whether he will make a satisfactory permanent worker. During this period the employee, too, has the opportunity to determine whether he likes the work involved, conditions, personnel, etc., and wishes to remain. He may quit at any time. The employer also has the right to discharge him. As stated in Parsons v. County of Los Angeles, 37 Cal. App. 2d 666, at page 672 [99 P. 2d 1079]: "It is a well-settled rule of law that where there are no restrictive provisions the power of the appointment carries with it the power of removal. (Fee v. Fitts, supra, [108 Cal. App. 551 (291 P. 889)].) The legislature has ample authority to determine the manner in which city employees may be removed and it has undertaken to fix the procedure to be followed. Subject to the limitations expressly imposed, the proper executive officers may discharge."

(See also Neuwald v. Brock, 12 Cal. 2d 662 [86 P. 2d 1047]. Snelling v. Civil Service Board, 90 Cal. App. 2d 865 [204 P. 2d 358].) It is only after the employee has completed his probationary period and remains to become "permanent" that certain employment rights become available to him.

To hold on the one hand that under ordinary circumstances a temporary employee can be constitutionally validly discharged without a hearing and on the other that, if he is discharged for insubordination and a violation of section 1028.1, he must be given a full hearing is to allow privilege and destroy equality. To grant him a hearing because of his refusal to answer questions with reference to his membership in a communist organization is to grant him a status which the ordinary employee in this same classification does not have. Petitioner can demand no greater degree of privilege than any other temporary county civil service employee regardless of any implied question of loyalty or disloyalty.

Petitioner contends that appellants make the same argument rejected in Housing Authority of the City of Los An-
268 geles v. Cordova, 130 Cal. App. 2d Supp. 883 [279 P. 2d 215]. The housing authority contended that because the lease provided it could terminate a tenancy upon 10 days' notice it needed to give no reason for termination and could terminate if tenants refused to sign the "Housing Loyalty Oath." There the court simply held that the right to public housing could not be based on the signing of a loyalty oath and a statutory right to public housing having been created this right could not be taken away without due process of law. This is quite another situation than the one at bar in which no statutory right exists in any event. It seems to this court that housing subversives does not present the same serious problem as hiring them.

Petitioner, defending the judgment of the lower court, relies heavily on Slochower v. Board of Higher Education of N.Y. City, 350 U.S. 551 [76 S. Ct. 637, 100 L. Ed. 692], and Board of Education v. Mass, 47 Cal. 2d 494 [304 P. 2d 1015], urging that under these authorities he is entitled to a full and complete hearing and a determination of whether his reasons for invoking the privilege are sufficient.

The petitioner, a temporary employee, does not fall within the framework of due process laid down in either of these two cases. In Slochower v. Board of Higher Education of N.Y. City, 350 U.S. 551 [76 S. Ct. 637, 100 L. Ed. 692], Professor Slochower, a permanent employee entitled to tenure under the state law, was summarily discharged by the board under a New York City charter provision. A New York statute gave a procedural right to a hearing before discharge to persons in the class of Slochower. The Supreme Court concluded there was a violation of due process in summarily dismissing him. However, the court also held that one does not have a constitutional right to government employment and "he must comply with reasonable, lawful and non-discriminatory terms laid down by the proper authorities." (Slochower v. Board of Higher Education of N.Y. City, supra, p. 555.)

Thereafter, the case of Board of Education v. Mass, 47 Cal. 2d 494 [304 P. 2d 1015] involving the constitutionality of section 12604 of the Education Code was decided. Mass, an instructor at City College in San Francisco, had appeared before a subcommittee of the House of Representatives and refused to answer questions asked of him regarding his membership in the Communist Party. He was later suspended without a hearing before the board of education for his refusal to testify. The court held that Mass was entitled to a
269 hearing. Here again the employee enjoyed a specific statutory right to a hearing before discharge.

An analysis of both opinions discloses that the court determined the rights of employment and discharge under conditions of tenure, or permanency, wherein by statute the employee was entitled to a hearing, as compared with the temporary status of petitioner herein and his total lack of any right of hearing under the charter and civil service rules. The rights involved under the Slochower and Mass cases were of statutory origin and in each the statutory safeguards had been built into certain rights of tenure which required there could be no discharge in the manner provided by law until such time as a full and complete hearing had been granted. In the instant case there is no statutory right for a hearing prior to the discharge of petitioner, a temporary employee. Holding a

temporary status only he had no basic right to either a hearing or to county employment and whatever his rights were must be measured by the county charter and the civil service rules adopted thereunder. The temporary status enjoyed by him distinguishes him from the permanency in the Slochower and Mass cases.

[3] Petitioner contends that he was discharged for invoking his constitutional privilege and that the implication of guilt it carries was responsible for his discharge. Actually he was discharged because he was guilty of insubordination and of violating section 1028.1 of the Government Code. Whatever implication he wishes to attach to his having invoked the privilege is immaterial here. Section 1028.1 heretofore held constitutional defines the refusal to answer as "insubordination" which authorizes dismissal.

[4] Petitioner also claims that all he did was to exercise a constitutional privilege in refusing to answer the questions and that his discharge without a hearing therefore was a violation of due process.

At the outset a temporary employee has no vested right to county employment and may therefore be discharged summarily. (Bailey v. Richardson, 182 F. 2d 46 [86 App. D.C. 248], affd. 341 U.S. 918 [71 S. Ct. 669, 95 L. Ed. 1352]; Friedman v. Schwellenbach, 159 F. 2d 22 [81 App. D.C. 365], cert. den.) Although involving federal civil service, these cases are persuasive here. The court in the Bailey case recognized that Congress had provided the President of the United States with authority to prescribe regulations for the admission of persons into civil service and for their discharge. The court held
270 that a summary discharge of a probational appointee was proper and without constitutional objection. At page 58, it stated: "Due process of law is not applicable unless one is being deprived of something to which he has a right." The holding in the Friedman case is similar to that in the Bailey case. The facts therein relative to status are practically identical with those in the instant case. The dismissal without a hearing was upheld. In the case of Parker v. Lester, 227 F. 2d 708, on the issue of due process the court stated at page 716: "When it is proposed to take from a citizen

through administrative proceedings some right which he otherwise would have, it has always been held that the constitutional requirement is that he shall be afforded notice and an opportunity to be heard."

We fail to see what it is to which petitioner "has a right" for which a hearing must be given. Because of his temporary employment status he is, at the most, only an applicant for a permanent position. Of interest in this connection is the analogous situation expressed in Bailey v. Richardson, supra, 182 F. 2d 46, at page 55: "If her status was merely that of an applicant for appointment, as we think it was, her nonappointment involved no procedural constitutional rights. Obviously, an applicant for office has no constitutional right to a hearing or a specification of the reasons why he is not appointed.

Furthermore, due process does not always require a hearing even where vested rights are involved. Defining "due process" the United States Supreme Court, speaking through Mr. Justice Frankfurter, stated in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, at page 162 [71 S. Ct. 624, 95 L. Ed. 817]: "Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process. * * * The Court has responded to the infinite variety and perplexity of the tasks of government by recognizing that what is unfair in one situation may be fair in another. * * * Whether the ex parte procedure to which the petitioners were subjected duly observed 'the rudiments of fair play,' (citing cases) cannot, therefore, be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this is done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of
271 and good accomplished—these are some of the considerations that must enter into the judicial judgment."

We are satisfied petitioner in the case at bar has been treated fairly at all stages of his employment and dismissal.

As to the applicability of the Fourteenth Amendment of the United States Constitution, or article I, section 13 of the California Constitution, the court in Bailey v. Richardson, supra, said at page 57: "The due process clause provides: 'No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *' It has been held repeatedly and consistently that Government employ is not 'property' and that in this particular it is not a contract. We are unable to perceive how it could be held to be 'liberty'. Certainly it is not 'life'. So much that is clear would seem to dispose of the point. In terms the due process clause does not apply to the holding of a Government office." Referring to the First and Sixth Amendment infringements, the court stated at page 60: "The situation of the Government employee is not different in this respect from that of private employees. A newspaper editor has a constitutional right to speak and write as he pleases. But the Constitution does not guarantee him a place in the columns of a publisher with whose political views he does not agree." and again at page 61: "No one denies Miss Bailey the right to any political activity or affiliation she may choose. What is denied her is Government employ. The argument upon the clear and present danger rule, therefore, must be that Miss Bailey has a right to Government employ unless her presence there would constitute a clear and present danger. There simply is no such right. To state the proposition is to demonstrate its untenability."

In the instant case it is clear that the controlling provision of the charter and civil service rules permit no hearing prior to discharge of those in Globe's class. There is no reason why petitioner should be permitted to claim and secure any extraordinary rights merely because he was insubordinate and refused to answer questions about his communist affiliations. He had no basic right to county employment in the first instance. No hearing as a matter of either constitutional or statutory right had to be granted an employee in Globe's position.

Untenable is petitioner's contention that the Congressional Committee was not a duly authorized committee for the reason that the authorizing resolution was too broad and vague in its terminology which empowered the committee to investigate un-American and subversive activities and all other
272 questions in relation thereto, without adequately or at all limiting or defining such terms. This point is predicated upon the case of Watkins v. United States, 354 U.S. 178, 201 [77 S. Ct. 1173, 1 L. Ed. 2d 1273], in which the court commented upon the indefinite nature of the authorization but did not hold the authorizing resolution unconstitutional. The facts in the Watkins case and in the instant controversy are entirely dissimilar, for in the Watkins case appellant was prosecuted for contempt after refusing to answer certain questions as to past Communist Party membership of other persons. Watkins had offered to answer any such questions pertaining to himself. In the present situation, certainly, there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee;—the employee was asked directly in regard to his own communistic activities and refused to answer such inquiries.

For the foregoing reasons, judgment is reversed.

White, P. J., and Fourt, J., concurred.

[1] See Cal. Jur. 2d, Public Officers, § 236; Am. Jur., Public Officers, § 247 et seq.

McK. Dig. References: [1, 2] Public Employees, § 6; [3, 4] Public Employees, § 4; [5, 6] Public Employees, § 12.

273 [Clerk's Certificate to foregoing paper omitted in printing.]

2nd Civil No. 22775

In the Supreme Court of the State of California

ARTHUR GLOBE, PETITIONER AND RESPONDENT

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, JOHN ANSON FORD, CHAIRMAN THEREOF, BURTON W. CHACE, KENNETH HAHN, HERBERT C. LEGG AND WARREN M. DORN, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS AND APPELLANTS

PETITIONER'S AND RESPONDENT'S PETITION FOR HEARING

To the Chief Justice and the Associate Justices of the California Supreme Court:

Petitioner and Respondent respectfully petitions that this cause be heard and determined by the Supreme Court for the following reasons:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution are presented which require consideration by this Court to the end that there be a uniformity of decision and a settlement of the uncertainty regarding this vital aspect of Constitutional law.

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2. The decision heretofore announced by this Court in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under Government Code, Section 1028.1. That question should be decided in this case.

3. The constitutional issue presented in this case is an important one that is constantly recurring, can be expected to recur in the future and should be given a definitive ruling by this Court.[1]

[1] The companion case in the court below (Nelson v. County of Los Angeles, 2nd Civil No. 22680, 162 A.C.A. 679, Petition for Hearing in which is being filed concurrently herewith) and Callender v. County of San Diego, 161 A.C.A. 529, demonstrate that the issue is not that of petitioner's alone. In the Callender case, this court denied a hearing, but it is reasonable to assume that the reason therefor was the presence of the laches issue in that case which was the sole basis for the District Court of Appeal's decision (161 A.C.A. at 532). The issue in the instant case has never been determined by this Court.

This petition proffers only questions of law. The decision of the District Court of Appeal can only be an erroneous guide to trial Courts if permitted to become final.

276

I. Question Presented

Is a county temporary employee denied due process of law by reason of his discharge, without a hearing, as "insubordinate", solely and only because of his refusal, on proper constitutional ground, to answer questions before a Federal Committee having nothing to do with qualifications and fitness for employment?

II. Procedural Statement of the Case

This is a petition for a hearing by this Court of the above entitled cause which is an appeal in a mandamus proceeding wherein the trial court issued its mandate ordering the Defendants to grant petitioner, a temporary County employee, a hearing in respect to his discharge from County employment, which judgment was reversed by the Court below.

Petitioner, a temporary employee in the position of social worker in the Department of Charities, County of Los Angeles, was discharged from employment on May 2, 1956. Petitioner thereafter requested a hearing before the Los Angeles County Civil Service Commission regarding his discharge, and
277 on May 29, 1956 petitioner was denied a hearing on the ground he was not entitled thereto. (C.T. 3, 14).

Petitioner thereafter filed on November 9, 1956 a petition for a writ of mandate in the Superior Court, County of Los Angeles and judgment for petitioner was entered on March 27, 1957 (C.T. 20). The trial court entered a written opinion (C.T. 26) ordering the respondents to hold a hearing before the Civil Service Commission regarding petitioner's reasons for refusing to answer questions propounded by the Congressional Committee and determining that respondents' refusal to grant petioner a full hearing constituted a denial of due process.

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*The record, exclusive of exhibits, is in two parts:
The Clerk's transcript (C.T.) and the Transcript of the respondent Civil Service Commission (Tr-C.S.C.); the exhibits pursuant to Rule 10, were transmitted to the Court below.

The District Court of Appeal, 2nd Appellate District, reversed the trial Court's granting of the peremptory writ of mandate.[1] The decision of the District Court of Appeal was filed on September 18, 1958. A copy of the opinion of that Court is attached hereto as Appendix "A". The opinion now appears at 163 A.C.A. 668.

STATEMENT OF THE FACTS

There is no dispute of fact. No charge was made nor any question raised as to petitioner's satisfactory performance of his duties.

278 Petitioner was a Civil Service employee of respondent County of Los Angeles in the position of Social Worker, Temporary, in the Department of Charities. He was employed on March 28, 1955 and discharged on May 2, 1956. (C.T. 1)

On April 6, 1956 petitioner was served with a subpoena requiring his appearance before the Committee on Un-American Activities of the United States House of Representatives. Having been sworn as a witness, petitioner answered some questions but refused to answer questions pertaining to political opinion, association, and membership in the Communist Party. (C.T. 2.)

Petitioner refused to answer said questions, basing his refusal on the guarantees of the First and Fifth Amendments to the Constitution of the United States (C.T. 2). Petitioner requested a hearing relative to his discharge and on May 29, 1956, the Los Angeles County Civil Service Commission ruled that petitioner, as a temporary employee, was not entitled to a hearing. (C.T. 3, 14.)

At no time had petitioner been asked by the County of Los Angeles Civil Service Commission, or any of the respondents, any of the questions or matters set forth in Government Code Section 1028.1 (C.T. 3, 14).

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[1] The instant case and the companion case of Nelson v. Los Angeles County, et al. (26 Civ. 22680), were consolidated for oral argument by the Court below.

III. Statute Involved

The statute herein involved is Section 1028. 1 of the Government Code of the State of California (hereinafter set forth in full as Appendix "B").

279 ARGUMENT

I. The Summary Discharge of a Public Employee for Exercise of a Constitutional Privilege Is Arbitrary and Discriminatory and a Denial of Due Process of Law Contrary to Slochower v. Board of Education, 350 U.S. 551 and Board of Education v. Mass, 47 Cal. 2d 494

There is no question but that petitioner was discharged solely and only because of his refusal, on Constitutional grounds, to answer questions before a Congressional Committee (C.T. 2, 3, 13, 14, 16, 17), and further that such questions had nothing to do with his fitness or qualifications for his employment (Exhibit "A", C.T. 16, 17).*

The United States Supreme Court in Slochower, reiterated (350 U.S. at 556) the Constitutional principals set forth in Wieman v. Updegraff, 344 U.S. 183, 192:

"We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that
280 Constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

In the Slochower case, the Court held invalid the discharge of a public employee under the circumstances of the instant case, because (350 U.S. at 558):

"The heavy hand of the Statute falls alike on all who exercised their constitutional privileges, the full enjoyment of

* The argument relating to the fundamental due process distinction between refusal to answer questions propounded by the employer as distinguished from refusal to answer questions propounded by a Congressional Investigating Committee are more fully set out in the briefs in the companion case, Nelson v. County of Los Angeles (2d Civ. 22880), in which Petition for Hearing in this Court is being filed concurrently herewith. The Court's attention is respectfully invited to the argument therein set forth.

which every person is entitled to receive. Such action falls clearly within the prohibition of Wieman v. Updegraff, 344 U.S. 183, supra."

It is submitted that these cases were decided on Constitutional issues and not on any rule of a State, or sub-division thereof, as to what procedural rights a particular public employee might or might not have. Indeed, it is precisely because the state procedure did not afford due process that the Supreme Court was required to act. This Court in Board of Education v. Mass, 47 Cal. 2d 494, at page 499, stated:

"We understand the holding of the Slochower case to be that a public employee may be dismissed for invoking the privilege against self incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to
281 answer is sufficient under the circumstances to warrant dismissal. The judgment involved here was rendered before the Slochower case was decided by the United States Supreme Court, and it is clear from the record that the parties and the trial court construed section 12604 of the Education Code as requiring the dismissal of an employee who refused to answer a question on the ground his answer might incriminate him, regardless of his reasons for claiming the privilege allowed by the Fifth Amendment."

Petitioner herein was discharged under the provisions of Government Code 1028.1 (C.T 16), which is identical in language with Education Code 12604 under consideration by this Court in the Mass case.

It is submitted that the Court below has erroneously interpreted the "due process" meaning of "hearing" as used by the United States Supreme Court in Slochower and by this Court in Mass. The Court below (Appendix "A"; 163 A.C.A. at 676) states:

"An analysis of both opinions discloses that the Court determined the rights of employment and discharge under conditions of tenure, or permanency, wherein by statute the employee was entitled to a hearing, as compared with the temporary status of petitioner herein and his total lack

282 of any right of hearing under the charter and civil service rules. The rights involved under the Slochower and Mass cases were of statutory origin and in each the statutory safeguards had been built into certain rights of tenure which required there could be no discharge in the manner provided by law until such time as a full and complete hearing had been granted. In the instant case there is no statutory right for a hearing prior to the discharge of the petitioner, a temporary employee. Holding a temporary status only he had no basic right to either a hearing or to county employment and whatever his rights were must be measured by the county charter, and the civil service rules adopted thereunder. The temporary status enjoyed by him distinguishes him from the permanency in the Slochower and Mass cases."

We submit that regardless of what county charter or civil service rule rights respondents may have had to discharge a temporary employee with or without reason, the true meaning of Slochower and Mass is that a public employee cannot be discharged for a reason which violates the Fourteenth Amendment. Accordingly, the summary discharge of petitioner, where nothing mattered, save whether there was refusal to answer questions having nothing to do with petitioner's

283 fitness as a county employee, before a legislative committee, does not satisfy the interdict of Slochower; does not afford the individual "protection * * * against arbitrary action," 350 U.S. 559. This, because the same lack of due process resulted as in Slochower and Mass; petitioner was discharged solely and only because of his refusal, on a proper claim of privilege, to answer questions before a Federal Committee as distinguished from being discharged for refusal to answer questions, propounded by his employer relating to qualifications and fitness for employment. (Cf. Lerner v. Casey, —— U.S. ——; 78 S. Ct. 1311; and Beilan v. Board of Education —— U.S. ——; 78 S. Ct. 1317).

Moreover, we respectfully submit, the court below was in error in its appraisal of the Slochower case as being decided on the basis that Prof. Slochower had tenure. The New York City Charter there, as the civil service rules here, precisely said that there was no right to a hearing. That being the

case, Slochower there, as petitioner here, was denied due process. As the Slochower case demonstrates, the federally guaranteed constitutional right to due process does not depend for its recognition in court based upon whether a city or county charter grants it.

The emphasis by the United States Supreme Court in the Lerner and Beilan cases, supra, on the constitutional distinction between questioning by a federal congressional committee and questioning by the employer further emphasizes the necessity of this Court's granting a hearing to consider such
284 question left undecided by this Court in the decision in the Mass case. The decision in the Court below can only be interpreted as precedent for the proposition that any rights of a public employee to a "hearing" relative to a discharge for refusal to answer questions by a Federal Investigative Committee are predicated upon rights of "tenure" or "permanency" of employment and not upon Constitutional grounds as guaranteed by the Fourteenth Amendment.

II. Petitioner Was In Fact Discharged for His Refusal To Answer Questions Before a Congressional Committee Where Petitioner Asserted the Privilege Against Self Incrimination Under the Fifth Amendment

We agree with the Court below that "at no time has the cause of petitioner's discharge been alleged to be anything but insubordination and violation of Section 1028.1, * * *" (Appendix "A"; 163 A.C.A. at 672). But this begs the issue. In fact the true reason for the discharge of petitioner was petitioner's admitted refusal to answer questions as to opinions, affiliation and membership before the House Committee on Un-American Activities, based upon the exercise of rights guaranteed by the First and Fifth Amendments of the United States Constitution. At no time has petitioner been questioned by his employer, the respondents herein, relative to his fitness for employment; instead respondents seized upon petitioner's refusal to answer questions, upon the claim of privilege, before the Federal Committee and by virtue of
285 Government Code Section 1028.1 turned such refusal into a conclusive presumption of guilt and discharged

petitioner. (Cf. Slochower, 350 U.S. at 559). It is submitted that under Slochower and Mass such cannot be done without violating due process of law.

This Court in the recent cases of People v. Calhoun, 50 A.C. 61 and People v. Snyder, 50 A.C. 117, reiterated and reaffirmed that no adverse inference may be drawn from the assertion of the Constitutional privilege. As this Court stated at 50 A.C. at 71:

"* * * (N)o implication of guilt can be drawn from a defendant's reliance on the Constitutional guarantee of the Fifth Amendment to the Constitution of the United States (or) Article I, Section 13 of the Constitution of the State of California * * *"

The Court below in answering petitioner's contention that he was discharged for invoking his Constitutional privilege and that an implication of guilt was imputed to that exercise states (Appendix "A"; 163 A.C.A. at 676):

"Whatever implication he wishes to attach to his having invoked the privilege is *immaterial* here (emphasis added). Section 1028.1 heretofore held constitutional defines the refusal to answer as 'insubordination' which authorizes dismissal."

286 It is respectfully pointed out that the cases cited by the Court below are all cases involving situations where the employee was questioned by his employer, as distinguished from the case herein. Furthermore, the court below on the one hand asserts that the sole reason for termination of petitioner was "insubordination" but states (Appendix "A"; 163 A.C.A. at 672):

"The right to discharge a public employee for refusal to testify under the circumstances here involved, the fact that his refusal constitutes insubordination, and the conclusion that *either disloyalty or insubordination establishes unfitness have been determined by prior judicial decisions.*" [Emphasis added.]

And on the other hand it states (Appendix "A"; 163 A.C.A. at 673):

"Therefore a government employee may be required to disclose certain information relative to fitness and *loyalty* as a

reasonable condition for retaining public employment * * *"
[Emphasis added.]

And then it says (Appendix "A"; 163 A.C.A. at 674):

"Petitioner can demand no greater degree of privilege than any other temporary county civil service employee *regardless of any implied question of loyalty or disloyalty.*" [Emphasis added.]

And further (Appendix "A"; 163 A.C.A. at 675) in reply to petitioner's argument regarding Housing Authority of
287 City of Los Angeles v. Cordova, 130 Cal. App. 2d Sup. 883 the Court says:

"It seems to this Court that housing subversives does not present the same serious problem as hiring them."

It is submitted that the Court below has equated "insubordination" with "loyalty" on the part of public employees under the statute. It can scarcely be said, therefore, that even in the view of the Court below that petitioner was, in truth and in fact, discharged merely for "insubordination", that the question of the implication from the exercise of the privilege was "immaterial here". This Court should therefore grant a hearing in order to clarify the ambiguity in meaning of the opinion in the Court below and preclude said opinion being a precedent for the concept that discharge for insubordination under Section 1028.1 is related or in any way involved with questions of loyalty or political beliefs.

III. The Court Below Has Failed To Distinguish in Its Opinion the Fundamental Difference Between Procedural and Substantive Due Process

Conceding arguendo that the petitioner herein had no right to a "hearing" under the rules of the Los Angeles County Civil Service Commission, it is submitted that the essential issue herein is not whether petitioner was granted a "hearing" as a matter of procedural due process, but on the contrary,
288 whether the summary discharge of petitioner with or without a hearing for exercising a Constitutional privilege in answer to questions not propounded by his employer is a denial of substantive due process.

The Court below has concluded that a temporary employee

had no "vested right to county employment" (Appendix "A", 163 A.C.A. at 676). But, as the Slochower and Wieman cases demonstrate, that does not meet the issue. The Court below relied heavily upon the cases of Bailey v. Richardson, 182 S. 2d 46 (C.A.D.C. 1952) affirmed by reason of an equally divided Court, 341 U.S. 918 and Friedman v. Schwellenbach, 159 Fed. 2d 22 (C.A.D.C. 1946) cert. denied 330 U.S. 838 (Appendix "A"; 163 A.C.A. at 676-678). It is submitted that these cases can no longer be said to be good law by reason of subsequent decisions of the United States Supreme Court. In Cole v. Young, 351 U.S. 536, the Court held that the entire loyalty-security program involved in those cases applied only to a limited few government employees—those in "sensitive positions" and it reversed the discharge. In Peters v. Hobby, 349 U.S. 331, involving the same loyalty-security program, the Court held that the discharge was invalid as violative of due process. And compare Parker v. Lester, 227 Fed. 2d 708 (C.A. 9 1955), on the issue of the constitutional right to due process, including the right to an adequate hearing, whenever Government seeks to prevent one from working on the ground of "loyalty" or "security". It is submitted that the "right" in the Parker case of seamen to engage in their chosen occupation is
289 of no greater constitutional stature than the right of one to earn his living as a social worker. In Parker, the attempt of the Government to deprive seamen of jobs by inadequate hearings (in the instant case there was no hearing at all) was violative of due process. So here. The seaman's job in the Parker case was not statutory nor provided for under Civil Service Rules. Nevertheless it is the genius of the due process clause to protect the right of a citizen to engage in his occupation and not be deprived of that right by governmental action without the requirements of that clause having been observed.

The precise issue of the Parker v. Lester case is presented herein. For the petitioner may have no absolute right to County employment and he may be discharged by the County, but he may not be discharged in a manner or on a ground inconsistent with due process of law. As the United States Supreme Court stated in Wieman v. Updegraff (supra):

"Congress could not 'enact a regulation that no Republican, Jew or Negro shall be appointed to Federal Office, or that no Federal employee shall attend Mass or take any active part in missionary work.'" (344 U.S. at 191, 192.)

No more could a State. Nor can a county enact a valid regulation which on its face, or as interpreted here, states that an employee who exercises a constitutional right before a congressional committee ipso facto and eo instante, loses his job.

290 The United States Supreme Court has made it clear that the Constitutional protections do extend to a public servant who is patently and arbitrarily or discriminatorily deprived of employment, regardless of any "right" to such employment. Therefore, it is submitted that where the State discharges an employee for the exercise of a federally protected right, the State then enters an area controlled by Slochower and Mass "and in the manner provided by law" is not limited to a procedural "right" to a hearing. On the contrary, "in the manner provided by law" means a manner consonant with due process whose purpose is to guarantee and to restrain every branch of government from arbitrary and unreasonable exercise of power and to give protection against any arbitrary interference with rights by Government.

IV. PETITIONER COULD NOT BE DISCHARGED UNDER GOVERNMENT CODE 1028.1 BECAUSE THE COMMITTEE WAS NOT A "DULY AUTHORIZED COMMITTEE OF THE CONGRESS"

Petitioner's position on this point is the same as in Nelson v. County of Los Angeles, 2d Civ. No. 22680, before this Court. The argument is set out in that Petition for Hearing as Point V and is not repeated here but is incorporated herein as though fully set forth. The Court's attention is respectfully invited thereto.

291 CONCLUSION

The Petition for Hearing should be granted.

Respectfully submitted.

A. L. WIRIN,
FRED OKRAND,
WILLIAM T. PILLSBURY,
Attorneys for Petitioner and Respondent.

292 *Appendix "A" to petition for hearing*

OPINION

GLOBE

v.

COUNTY OF LOS ANGELES

Omitted. Printed side page 261 supra.

304 *Appendix "B" to petition for hearing*

California Government Code 1028.1:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

305 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so

propounded shall be guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

306 In the Supreme Court of the State of California

2nd Civ. No. 22775

Answer to petition for hearing

October 31, 1958

[Title omitted.]

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Arthur Globe, the plaintiff and respondent, has filed his petition for hearing before this Honorable Court. The petition is based upon the following grounds:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution, are presented.

2. The decision in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under the Government Code Section 1028.1.

307 3. The constitutional issue presented is an important one that can be expected to recur in the future.

The gist of the petition is, of course, that the opinion of the District Court of Appeal is erroneous. The defendants and appellants submit that the opinion of the District Court of Appeal is correct and that it properly disposed of all legal arguments advanced by the petitioner therein and herein, and thus there is no merit to any of the grounds stated in the Petition for Hearing.

STATEMENT OF THE CASE

The opinion of the District Court of Appeal (Petition for Hearing, Appendix A; 163 A.C.A. 668) accurately and completely sets forth the facts pertinent to the issue. The question presented is properly stated therein as follows at page 670:

"The issue before us is whether the County Civil Service Commission is required to hold a hearing on the discharge of a temporary county employee for a violation of Section 1028.1 of the Government Code."

POINT I

THE SUMMARY DISCHARGE OF A PROBATIONARY COUNTY EMPLOYEE WITHOUT A HEARING IS FREE FROM ANY CONSTITUTIONAL OBJECTION

Bailey v. Richardson, 182 F. 2d 46, 53, affirmed 341
308 U.S. 918 [71 S. Ct. 669, 95 L. Ed. 1352];

Freedman v. Schwellanbach, 159 F. 2d 22, cert. den., 330 U.S. 838 [67 S. Ct. 979, 91 L. Ed. 128].

Both of the above cases involve loyalty discharges of federal employees whose status was the same as petitioner in that they were probationary employees. As we pointed out at pages 15 and 16 of Appellants' Opening Brief and under Point IV, pages 7 to 11 of Appellants' Closing Brief, the above cited cases are authority that the discharge of a probationary employee is free from any constitutional objection because due process is not applicable unless one is being deprived of something to which he has a right. A temporary employee has no right to a position and thus, absent a statute, has no more right to a hearing on dismissal than an applicant for a position.

In Bailey v. Richardson, supra, 182 F. 2d 46, at page 55, the court said:

"* * * If her status was merely that of an applicant for appointment, as we think it was, her nonappointment involved
309 no procedural constitutional rights. Obviously, an applicant for office has no constitutional right to a hearing or a specification of the reasons why he is not appointed."

There Bailey, the petitioner, had been appointed provisionally to her position with the Federal Government.

The fact, therefore, that Globe was a mere temporary employee, a probationer serving during the period of time within which the county was permitted to decide whether or not it desired to retain him as an employee, answers all the argu-

ments advanced by Globe. Neither Board of Education v. Mass, supra, 47 Cal. 2d 494, nor Slochower v. Board of Higher Education, 350 U.S. 551, has any application to the instant case because of that simple fact, both of those cases being involved with permanent employees.

POINT II

PETITIONER'S DISCHARGE WAS NOT BASED UPON ANY PRESUMPTION OF GUILT BY REASON OF INVOKING THE FIFTH AMENDMENT

Under Point II of the Petition for Hearing, counsel attempts to drag a red herring across the court's path by asserting that the real cause of his discharge was a conclusive presumption of guilt because his refusal to testify was under the claim of constitutional privilege.

That is a purely false assumption and counsel knows it. The County is not concerned in Globe's reasons for
310 refusing to testify. It would have made no difference what reason he gave for such refusal or if he gave no reason. His mere silence constituted a violation of the code section and was the true reason for his discharge.

The cases which refer to implication of guilt from invoking the Fifth Amendment have no application to Globe's case or to a violation of Section 1028.1 of the Government Code.

CONCLUSION

The opinion of the District Court of Appeal is not at odds with any decided case cited by counsel either in the briefs or in the Petition for Hearing. On the contrary, it is harmonious with all the leading cases. No question of implication of guilt from reliance upon the Fifth Amendment is involved, as petitioner contends. Whether Globe was a Communist or not is of no concern whatever. He was guilty of insubordination, of violation of a duty which involved his fitness for service, and it makes no difference why he refused to testify. He was subject to summary dismissal without a hearing be-

cause of his temporary status. The Petition for Hearing should therefore be denied.

Respectfully submitted.

HAROLD W. KENNEDY,
County Counsel.
WM. E. LAMOREAUX,
Assistant County Counsel.
RONALD L. SCHNEIDER,
Deputy County Counsel.

By ——— ———,
Attorneys for Respondents and Appellants.

311 Affidavit of service by mail (omitted in printing).

312 In the Supreme Court of the State of California,
in Bank

2nd District, Division 1, Civ. No. 22775

GLOBE
v.
COUNTY OF LOS ANGELES

OPINION

Order Due November 17, 1958

Order denying hearing after judgment by District Court of Appeal

Filed November 12, 1958

[File endorsement omitted.]

Respondent's petition for hearing denied.

Gibson, C. J., Carter, J. and Traynor, J. are of the opinion that the petition should be granted.

GIBSON,
Chief Justice.

313 Supreme Court of the United States

No. 608 Misc., October Term, 1958

THOMAS W. NELSON AND ARTHUR GLOBE, PETITIONERS

v.

COUNTY OF LOS ANGELES ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

Order allowing certiorari

June 29, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and the case is transferred to the appellate docket as No. 1038.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U.S. GOVERNMENT PRINTING OFFICE 1959